



**C2D - Centre for Research on Direct Democracy**  
**ZDA - Zentrum für Demokratie Aarau**  
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## ***C2D Working Paper Series***

### **Direct Democracy in the Baltic States**

Institutions, Procedures and Practice  
in Estonia, Latvia and Lithuania

**Evren SOMER**

**Somer, Evren**

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Evren SOMER

Evren Somer studied Political Science, Constitutional and International Law at the University of Zurich. He joined the c2d in October 2010 and is currently working towards a doctoral degree in Public Law.

## ABSTRACT

From the end of 1980s the Baltic States: Estonia, Latvia and Lithuania successfully moved towards re-independence. At that stage referendums were a useful tool to carry through the transition peacefully. Today, each constitution of the Baltic Republics provides for instruments of direct democracy that have been used in different ways. It is assumed that the possibility of a referendum introduces the people into the decision-making process as an additional veto player whose participation is needed for a change in the legislative status quo. It is further expected that direct democratic instruments empower the citizens, forming a broader spread of power. The results reported in this paper, however, challenge these assumptions. Regardless of the mechanism employed, direct democracy fails to fulfil the desired effect of allowing citizens to take political decisions directly and over the heads of their representatives. Rather, referendums have been used strategically for partisan interest. The poor performance of direct democracy in the Baltic States to date is not only a result of strategic choices made by the authorities, but also of citizen-unfriendly procedural designs. In all three countries there are many formal constraints diminishing the will of the people.

## KEY WORDS

Direct democracy, referendum, initiative, Baltic, Estonia, Latvia, Lithuania, veto power

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## 1 Introduction

Within the last decades there has been a considerable rise in the use of direct democratic institutions around the world. And provisions for direct democracy have increasingly been added to the constitutions of new or re-established democracies<sup>1</sup>. Such an increase in the importance of direct democracy has also been seen in the Baltics States of Estonia, Latvia and Lithuania<sup>2</sup>. For these countries referendums were essential to gaining independence from the Soviet Union at the end of the communist era. Until that time, for over fifty years (1940-1991), these countries had been constituent republics within the Soviet Confederation and subject to the Soviet Union's ideological discourse. Not nationality, but class was the source of legitimacy for all government decisions relating to political and economical life<sup>3</sup>. In 1991 and in the immediate post-independence period, referendums served to restore the statehood of the Baltics and to re-

- 1 BUTLER DAVID/RANNEY AUSTIN (eds.), *Referendums around the World. The Growing Use of Direct Democracy* (Washington D. C. 1994); AUER ANDREAS/BÜTZER MICHAEL (eds.), *Direct Democracy. The Eastern and Central European Experience* (Aldershot et al. 2001); AUER ANDREAS, *National Referendums in the Process of European Integration: Time for Change*, in: ALBI ANNELI/ZILLER JACQUES (eds.), *The European Constitution and National Constitutions. Ratification and Beyond* (Amsterdam 2007), p. 261-271; PALLINGER ZOLTAN TIBOR/KAUFMANN BRUNO/MARXER WILFRIED/SCHILLER THEO (eds.), *Direct Democracy in Europe. Developments and Prospects* (Wiesbaden 2007); KAUFMANN BRUNO/WATERS M. DANE (eds.), *Direct Democracy in Europe. A Comprehensive Reference Guide to the Initiative and Referendum Process in Europe* (Durham 2008), (cit. KAUFMANN/WATERS) ALTMAN DAVID, *Direct Democracy Worldwide* (Cambridge 2010) (cit. ALTMAN); HUG SIMON/TSEBELIS GEORGE, *Veto Players and Referendums around the World*, in: *Journal of Theoretical Politics* 14(4)/2002, p. 465-515 (cit. HUG/TSEBELIS); SERDÜLT UWE/WELP YANINA, *Direct Democracy Upside Down*, *Taiwan Journal of Democracy* 8(1)/2012, p. 69-92 (cit. SERDÜLT/WELP).
- 2 RUUS JÜRI, *Estonia*, in: AUER ANDREAS/BÜTZER MICHAEL (eds.), *Direct Democracy. The Eastern and Central European Experience* (Aldershot et al. 2001), p. 47-62 (cit. RUUS, Estonia); UŠACKA ANITA, *Latvia*, in: AUER ANDREAS/BÜTZER MICHAEL (eds.), *Direct Democracy. The Eastern and Central European Experience* (Aldershot et al. 2001), p. 94-108 (cit. UŠACKA); KRUPAVICIUS ALGIS/ZVALIAUSKAS GIEDRIUS, *Lithuania*, in: AUER ANDREAS/BÜTZER MICHAEL (eds.), *Direct Democracy. The Eastern and Central European Experience* (Aldershot et al. 2001), p. 109-128 (cit. KRUPAVICIUS/ZVALIAUSKAS).
- 3 MOLE RICHARD C. M., *The Baltic States from the Soviet Union to the European Union. Identity, Discourse and Power in the Post-Communist Transition of Estonia, Latvia and Lithuania* (London/New York 2012), p. 81-119; see also HOFFMANN THOMAS, *Sachunmittelbare Demokratie im Baltikum (Estland, Lettland, Litauen)*, in: NEUMANN PETER/RENGER DENISE (eds.), *Sachunmittelbare Demokratie im interdisziplinären und internationalen Kontext 2010/2011* (Baden-Baden 2012), p. 309-327 (cit. HOFFMANN, Baltikum).

establish their cultural identity. Since then, for the most part, direct democratic tools have been used by the political parties to promote particular interests.

Today, a large set of direct democratic instruments is available to the people of the Baltic States, and within the last two decades they have been variously applied. Of the referendums held between 1991 and 2012, only a small part succeeded and the majority were ineffective in bringing about a policy change. The literature on referendums in the Baltics has contributed some possible explanations for such kinds of uses and the efficiency of referendums<sup>4</sup>. But, in many cases a confusing classification of referendums has been used, and less attention has been paid to the institutions regulating direct democracy in the Baltics.

In this respect the paper intends to present a comparative analysis of direct democratic instruments from a legal perspective and specifies the political actors controlling these. The paper further pays attention to specific rules determining the procedures and practices of referendums and gives some possible explanations by comparing these rules.

In order to meet this objective, at first a theoretical conceptualisation of direct democracy and of its three mechanisms – automatic, top down, bottom up – in combination with the veto player model<sup>5</sup> is needed (Chapter II). Following this conceptualisation, a systematic legal framework of all existing direct democratic institutions at national level and their practical use from 1991 to 2012 is provided for each Baltic State. Here, also possible causes of variation in the use and efficiency of referendums are discussed (Chapters III-IV-V). To assess a better understanding of the performance of direct democracy, the paper further makes a comparison of referendums held in the Baltics. Here, by referring to Switzerland, also a rough quality check of direct democracy in the Baltics is undertaken (Chapter VI). Thereafter the paper makes some concluding remarks (Chapter VII).

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4 See HOFFMANN, Baltikum, p. 312 f.; FELDHUNE GITA, Latvia, in: KAUFMANN BRUNO/WATERS DANE M. (eds.), *Direct Democracy in Europe. A Comprehensive Reference Guide to the Initiative and Referendum Process in Europe* (Durham 2004), S. 77-83 (cit. FELDHUNE); MØLLER LUISE PAPE, *Moving Away from the Ideal: The Rational Use of Referendums in Baltic States*, *Scandinavian Political Studies*, 23(3)/2002, p. 281-293 (cit. MØLLER).

5 HUG/TSEBELIS, p. 465-515.

## **2 Definition and classification of direct democracy**

### **2.1 Popular sovereignty through referendums**

The modern concept of democracy is based on the idea of popular sovereignty. Popular sovereignty means that actions and institutions of the state must be legitimised by the people<sup>6</sup>. In a representative democracy this legitimisation generally occurs at parliamentary elections. Thereafter, for period of four or five years, the will of the people is represented by the elected national legislative body. By contrast, within a direct democracy the people exercise their sovereignty directly. It enables the people to devolve their sovereignty to the political decision-making process in the most direct manner.

A referendum is an institution of direct democracy which empowers the citizens to reach political decisions on issues with which a political elite may disagree. More precisely, it is a right of eligible citizens to either accept or reject a specific public issues that may originate from a decision or proposal of the authorities or from a citizens' initiative<sup>7</sup>. Here, a link between representative and direct democracy is made, wherein the citizens not only share the decision-making process but also have the final say. Thus, direct democracy introduces the people as an additional political actor into the decision-making procedure whose agreement is required to make a policy change possible<sup>8</sup>. Whether the popular decision on the public issue submitted to vote is positive or not, referendums have a legitimising effect, since they reflect the will of the people. In addition, referendums work as correctives and serve as instruments of power sharing. This is especially crucial for those minorities whose interests are represented either inadequately or not at all through the representative organs<sup>9</sup>. But, here, in order to assess such a desired effect it is important to consider which direct democratic mechanisms are available to the people and how well designed their procedures are.

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- 6 MARXER WILFRIED/PÄLLINGER ZOLTÁN TIBOR, System Context and System Effects of Direct Democracy - Direct Democracy in Liechtenstein and Switzerland compared, in: PÄLLINGER ZOLTÁN T. [et al.] (eds.), *Direct Democracy in Europe. Developments and Prospects* (Wiesbaden 2007), p. 13; HANGARTNER YVO/KLEY ANDREAS, *Die demokratischen Rechte in Bund und Kantonen der Schweizerischen Eidgenossenschaft* (Zürich 2000), p. 132 (cit. HANGARTNER/KLEY).
- 7 INITIATIVE & REFERENDUM INSTITUTE EUROPE (IRI), *Guidebook to Direct Democracy in Switzerland and beyond* (Marburg 2008), p. 240 (cit. IRI).
- 8 see following explanations, HUG/TSEBELIS, p. 465–515.
- 9 IRI, p. 71.



## 2.2 Mechanisms of direct democracy and veto player

How and to what extent the people's will could be converted into legal norms of a state depends on the institutional arrangements (rules in form) that a country provides for direct democracy. There are several ways, and yet it has to be taken into account that direct democracy does not always enhance democratisation in public politics. Depending on the mechanism, it can also serve politicians as legitimisation of their own power. A *mechanism of direct democracy* is a set of procedures allowing citizens to make political decisions directly<sup>10</sup>. Within these procedures it is important to determine who *controls* the vote, because the common term of referendum is often used to describe all kinds of popular decision-making processes. As AREND LIJPHART states, a referendum can be grouped according to its *initiator*, which can either be controlled or uncontrolled<sup>11</sup>. A controlled mechanism occurs if citizens have to decide – through a facultative or mandatory referendum – on a parliamentary decree which it had pre-passed. And an uncontrolled mechanism may take place if a certain number of people can initiate and submit their own proposal to a popular vote, irrespective of the state authorities.

To give a more systematic comparison of direct democratic institutions and procedures in the Baltic States and to show their possible effects, it is essential to classify direct democracy according to its possible mechanisms. My classification is based on DAVID ALTMAN's typology, which groups direct democracy into three main mechanisms according to their initiator (automatic, from above, from below), character (binding, nonbinding) and intention (proactive, reactive)<sup>12</sup>. Here it should be noted that in some cases these three mechanisms can overlap. In addition to ALTMAN's conceptualisation, I also pay attention to the normative level (constitution, law, statutory), or to the subject matter (policy issues) of a referendum that can vary within a single mechanism. Further, I combine ALTMAN's 'procedural typology' with the 'controlling-model' of SIMON HUG and GEORGE TSEBELIS that is based on the theory of the veto-player. As the authors note, it is the information about the control options that is crucial in order to assess the effect of institutions allowing for referendums. The 'controlling-model'<sup>13</sup> explains differences between referendums, depending on who is empowered to *ask the question*, or, rather, to frame

10 SERDÜLT/WELP, p. 70.

11 AREND LIJPHART, *Democracies. Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, (New Haven/London 1984), 203 f.

12 See also ALTMAN, p. 8–18.

13 I use this term for their «multi-dimensional model of referendums on the basis of veto player theory».

or determine the content of the popular vote, and who exactly *triggers the process of a referendum*<sup>14</sup>. And according to this classification we can generally distinguish between four main direct democratic institutions, which are *required referendums*, *authorities' referendums* (e.g. plebiscites, parliamentary referendums or extraordinary referendums), *citizens' facultative referendums* (popular veto) and the *citizens' initiatives* (popular initiative)<sup>15</sup>.

## **2.2.1 Initiator of referendums**

### **2.2.1.1 Referendums required by the constitution**

*Referendums required by the constitution*, or 'mandatory referendums', as they are also called, belong to the first mechanism of direct democracy. Here a popular vote on an amendment to the constitution or law must be held automatically since the referred issue cannot otherwise be amended<sup>16</sup>.

Theoretically, constitutional or legal regulations are the 'initiators' of automatic direct democratic mechanisms. Nevertheless, the activation of the referendum procedure does not occur automatically, as the name of the mechanism per se states. It has to be asked by a political actor. In general, framing the question in the sense of adopting a new law, amending, or repealing an existing law is a political result of a legislative activity that is caused by current economical, societal or political events within and outside the borders of a state. The framing of the question can further depend on the willingness of the political establishment to carry out a revision of the constitution or a law. Also, a group of citizens that may wish to effect an alteration to a specific constitutional norm or a law can be the source of legislation. Therefore, required referendums can also be linked with two other mechanisms.

Automatic referendums mainly apply to constitutional amendments since they refer to the most significant issues concerning the existence of the state and the nation. But also international treaties can belong to this type of referendum. And in some states or at some second tiers (regions; states; cantons; *Länder*) of federal systems there are also specific laws or

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14 HUG/TSEBELIS, p. 477–488.

15 HUG/TSEBELIS, p. 478.

16 In the federal system of Switzerland, for instance, any amendment to the constitution but also joining an organisation for collective security or a supranational community, urgent federal legislation without the required constitutional basis require an obligatory referendum. And for an approval both the majority of the participant electorate and the majority of the cantons (double majority) in favour are needed.

other public issues that can only be altered by a popular vote. In addition, a required referendum can also be held if a legislative resolution has not been approved by a qualified parliamentary majority<sup>17</sup>.

Within an automatic mechanism, it is essential to note what central role is given to the citizens automatically. As the authors SIMON HUG and GEORGE TSEBELIS state correctly, the possibility of a [automatic] referendum enables the citizens to become a veto player and thus to have the final say in decision-making<sup>18</sup>.

According to GEORGE TSEBELIS, veto players are individual or collective actors whose agreement is required for a change in the legislative status quo<sup>19</sup>. Depending on the model of political system, the number of veto players (presidential or parliamentary regimes, uni-cameral or bi-cameral parliament with equal competencies, parties, citizens, federalism) can vary. It should be noted that the possibility of a referendum in a political system introduces the people as an additional veto player into the decision-making process. And as the number of these actors and the ideological gaps between them increase, a significant change in the status quo becomes more difficult and policy stability increases.

Required referendums automatically add the hurdle of popular support. In other direct democratic mechanisms (referendums from above or citizen-initiated referendums) the formation of the popular veto player is optional and, depending on the criterion of a referendum, the nature of the popular veto player can vary. As HUG/TSEBELIS state, a veto-player may only trigger a referendum on a proposal that was framed by another actor, such as parliament. Another option is that a referendum is framed and triggered by the same veto player. If he or she *controls* both asking the question of the popular vote and triggering the process of the referendum, he or she would become at the same time the one actor who individually determines the outcome, because others would lose their ability to veto it<sup>20</sup>. However, it has to be taken into account that the referred actor has still to make

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17 So in some Swiss cantons as Canton of Aargau, Art. 62 par. 1 lit. b, Constitution of Canton of Aargau of June 25, 1980 (Cst-AG) and Canton of Solothurn, Art. 35 par. 1 lit. d, Constitution of Canton of Solothurn of June 8, 1986 (Cst-SO).

18 HUG/TSEBELIS, p. 479.

19 TSEBELIS GEORGE, Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism, *British Journal of Political Science* 25/1995, p. 289 (cit TSEBELIS Decision Making); TSEBELIS GEORGE, Veto Players. How Political Institutions Work (Princeton 2002), p. 17 f. (cit. TSEBELIS, Veto Players).

20 HUG/TSEBELIS, p. 466 f., 477-487.

every effort (e.g. campaign) to ensure that the majority of the deciding body is convinced by his/her position. And he or she has also to consider that within a legal framework there can be some further specific rules and provisions that may restrict his or her power as well.

#### **2.2.1.2 Referendums from above**

The second type of direct democratic mechanism includes referendums that are derived from *top down*. Top-down referendums refer to 'plebiscites' or to 'authorities' referendums'. In contrast to a required referendum, they are optional. In other words, they depend on the will of the authorities in power (executives or legislators) that are in full control of both the formulation of the question (adoption, alteration, repeal) and the triggering of the referendum. Generally, it is the parliament or a part of the parliament that both frames the proposal and triggers the referendum. But, this is not necessarily always the case. The asking and triggering of a top-down referendum can also be carried out by two different actors of the political establishment, namely by the president and parliament. And in some few cases the triggering of a referendum by a public authority can also take place in combination with signature collection by the people (joint action with citizens).

For some scholars it is disputable how far a plebiscite can be part of the realm of direct democracy. According to BRUNO KAUFMANN and M. DANE WATERS, 'plebiscites have nothing to do with referendums and initiatives; on the contrary, they are often used by governments who want to get a special legitimacy on their policies by bypassing laws and constitutional rules'<sup>21</sup>, or to avoid the consequences of political responsibility, which may result from the adoption of a sensitive issue. Thus, plebiscites would have a greater legitimising than a democratizing effect, as they do not empower the citizens. Their reservation towards plebiscites may be rather confirmed if plebiscites are being used within a political regime with authoritarian tendencies, and if the constitution contains such provisions that empower a single (executive) state authority, such as the president, to formulate any proposal and at the same time to trigger the referendum on it. There, he would clearly bypass the parliament, which is in fact the legislative authority. Within a state with a weak civil society, ambiguous separation of powers and missing principles of rule of law, this would open a Pandora's box. The consequences are clear: abuse of power and being far from anything like popular sovereignty.

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21 KAUFMANN/WATERS, p. XIX; see also IRI, p. 91.

In more democratic countries with well-framed systems of checks and balances it may still be advisable to consider plebiscites as a part of direct democratic mechanisms, especially if the resolution is being drafted and submitted by two different authorities. First of all, citizens will get involved to challenge the legislative status quo and, depending on the issue, they may prefer another outcome than that of the actor who triggers the referendum. There is still a lack of a guarantee that the voters would follow the state authority by launching a popular vote. And there might also be specific constraints on the authority itself (e.g. a negative outcome leads to a premature ending of term) that limits its behaviour to trigger a referendum.

Besides plebiscites, also the authorities' referendums belong to top-down initiated referendums. Such a vote occurs due to an initiative on part of the parliament or parliamentary minority. An authorities' referendum as an oppositional instrument in favour of the status quo mainly happens if a specific part of the parliament votes against a policy accepted by the governing majority and if the same group can force (trigger) a referendum on that parliamentary decree that is itself object of an optional referendum<sup>22</sup>. Here, the actor asking and triggering the referendum is indeed the parliament, but it is not the same parliamentary group. Therefore, it is very essential to distinguish who precisely formulates the question and who triggers the process of a referendum<sup>23</sup>.

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22 For instance, in the Canton of Zurich (Switzerland) one fourth of the members of parliament (45/180) are entitled to launch a referendum (Kantonsratsreferendum) on parliamentary decrees that are subject to facultative referendums, if they so wish, Art. 33, par. 2, lit. c, Constitution of Canton of Zurich of February 27, 2005 (Cst-ZH). Also in other Cantons, such as the Canton of Zug, not less than one-third of the members of parliament can trigger a referendum (Behördenreferendum) on a decree that has been passed by the parliamentary majority ante, § 34, par. 4, Constitution of Canton of Zug of January 31, 1894 (Cst-ZG). Another six cantons that also have such an instrument are the Cantons of Aargau, Thurgau, St. Gallen, Fribourg, Appenzell-Ausserrhoden and Obwalden.

23 The so-called extraordinary referendums (ausserordentliches Referendum) in some Swiss Cantons, such as Basel-City, Glarus, Graubünden, Jura, Schaffhausen, Solothurn, Thurgau and Uri, have rather plebiscitary character because they are triggered by parliamentary majorities. Here, the parliamentary majority triggers ad hoc a referendum on its own decree that is otherwise not subject to a referendum and submits the parliamentary draft directly to popular vote (extraordinary obligatory referendum). Or the parliament allows the citizens to trigger a referendum on the parliamentary proposal that was not subject to a referendum (extraordinary optional referendum).

Despite some criticism on plebiscites, it should be noted that these can also have a democratising effect, especially if such a vote has been triggered by a parliamentary minority. Thus, it is advisable to include plebiscitary referendums in the system of direct democracy. Here, the inclusion is necessary in order to achieve the paper's aim, because only then can an adequate comparison of direct democratic mechanisms and instruments in the Baltic States be made.

### **2.2.1.3 Citizen-initiated referendums**

The third direct democratic mechanism refers to referendums that are being derived from bottom up. One can distinguish between two main types of *citizen-initiated referendums*: the citizens' facultative referendum<sup>24</sup> and the citizens' initiative. Both institutions are triggered by the people and hence require a collection of a certain amount of signatures from the electorate. However, citizens' facultative referendums and citizens' initiatives have different functions: a reactive one to sustain policy stability and a proactive one to change the status quo.

*The citizens' facultative referendum* is a direct democratic instrument enabling a certain number of citizens to call – by a formal demand – a popular vote on a relevant decree on a constitutional provision or law which has been *adopted, altered or repealed* (framing of the question) by the parliament. In other words, the citizens' facultative referendum is a popular veto that is used by a group of the electorate to sustain policy stability by breaking the policy change effectuated by the representative body. Besides constitutional or legal provisions, also other public issues, such as public finances (Finance Referendum to grant public expenditures) or international treaties, can be subject to a popular veto. It is a reactive popular instrument allowing latent veto players like the people to veto a resolution of the parliament in order to force a return to the status quo ante. Within this procedure authorities keep the responsibility for the formulation of the referendum question (which is the parliamentary resolution on a law or other public issue) whilst triggering the referendum remains a matter for citizens. Therefore, the facultative referendum causes nothing else than a switch of final decision-making on a public issue from the parliamentary to the popular arena. The outcome of the ballot is either that of confirming or rejecting.

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24 To avoid confusion I use this terminology because facultative referendums can also emanate from a state representative body, such as parliament, government or the president. Then we speak of optional plebiscites.

In the sense of substantive law, an adoption by means of the referendum means that the majority of the citizens who participated in the ballot give their consent to parliament's resolution regarding the adoption, alteration or repeal of the specific law. It is a final signal to go ahead for the policy change launched by the parliament. A negative outcome of the ballot, by contrast, is a popular confirmation for the proponents who had triggered the citizens' facultative referendum to bring a final decision on the issue to the popular arena. Such a result is a final answer in favour of the proponent's preferred status quo and a rejection of parliament's proposed policy, which can thereby not come into force. Nevertheless, some confusing results can appear if the referendum question put on the ballot paper is formulated in a confusing or ambiguous manner. Hence, to avoid such results the questions to be decided via referendum should be clearly formulated.

The second instrument of bottom-up mechanism refers to the *citizens' initiative*. By contrast to citizens' facultative referendums, a full control of a popular vote with regard to its asking and triggering properties is gained through this direct democratic institution. It is a proactive instrument that enables a certain number of the electorate both to put their own proposal on the political agenda (framing the question) and to submit it to a referendum (triggering). Citizens' initiatives can be distinguished between the *citizens' constitutional initiative* and the *citizens' legislative initiative*<sup>25</sup>. However, as in the Baltic States it is also possible to held citizens' initiatives on other public issues. A popular initiative aims to alter the status quo by adopting a new law, or by amending or repealing an already existing law. Independently of the parliamentary majorities, theoretically it should enable certain minorities to push forward a specific issue that the authorities would otherwise not do of their own volition. And as the citizens' initiative is framed and triggered exclusively by the people theoretically it should cancel out the remaining veto players in the legislative arena<sup>26</sup>. It is one of the reasons for which a citizens' initiative has also been called the radical institution of direct democracy<sup>27</sup>.

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25 In Switzerland popular initiatives have also to comply with the requirements of consistency of form (an initiative has to be submitted either as a general suggestion or formulated draft, *tertium non datur*) and of subject matter (parts of the text of the initiative shall not contain issues that have no connection to each other, there must be a relation with regard to its content), see Art. 139, par. 3, Swiss Federal Constitution of April 18, 1999 (Cst-CH).

26 see also HUG/TSEBELIS, p. 489.

27 HANGARTNER/KLEY, p. 156 f.



Nevertheless, factually, in most cases the radical institution of direct democracy is been used by organized interest groups or elites themselves.

As in the case of automatic referendums, the people continue to be a veto actor with final decision-making authority, also within a citizen-initiated mechanism. Within this mechanism, however, they can be called *latent veto players* since they avail themselves of the instruments of the popular veto and popular initiatives, optionally.

Besides the facultative referendum and the citizens' initiative, there is a third institution, namely the *recall*, which can be included in the group of referendums from below. However, it has to be noted that direct democracy makes decisions about substantive issues and not about people or public bodies. The right of recall is an instrument to dissolve the parliament or to recall another state authority before the end of its term of office. It is important to note that such an institution has therefore also to be triggered from below by gathering an amount of popular signatures<sup>28</sup>. The outcome of a recall is more than an adoption, alteration or repeal of a certain issue; it is aimed at single authorities or whole public bodies and has larger consequences for the political establishment<sup>29</sup>.

Further democratic institutions such as the 'citizens' agenda initiative' are excluded from the third mechanism of direct democracy. Agenda initiatives permit a group of citizens to force the parliament to consider a proposed action or a bill. However, as a petition it has no legally binding force to obligate the parliament to adopt the proposal or to let it be submitted to a popular vote.

### 2.2.2 The character of referendums

Besides the three main mechanisms that have been classified according to their initiators, further attention must be paid to the *character* of referendums. The outcome of a popular vote can either be consultative or binding<sup>30</sup>. Binding decisions are final and mandatory for all state authorities. The appropriate state body is legally compelled to implement the passed proposal. By contrast, nonbinding referendums do not have any legal consequences even if the majority of the electorate has approved them. Such decisions are indeed non-decisions since they create an uncertain and unfair democratic procedure<sup>31</sup>. Here, the final word on

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28 See also SERDÜLT/WELP, p. 71.

29 ALTMAN, p. 16.

30 ALTMAN, p. 8.

31 INITIATIVE & REFERENDUM INSTITUTE EUROPE (IRI), Initiative & Referendum Monitor 2004/2005 (Amsterdam 2004), p. 23 (cit. IRI, Monitor).



the approval of public issues still depends on the volition of the parliament. But, in order to limit the power of such state organs, binding decisions on referendums are absolutely necessary within a direct democratic system.

A distinction between binding and nonbinding referendums is also of eminent significance for the application of the veto-player approach that has been integrated into the classification of referendum mechanisms. It should be noted that there is no additional veto player as long as referendums are consultative, even if the referendum has been framed and triggered by the same political actor.

Regardless of whether a referendum is binding or not, to avoid disruptive consequences, popular votes face an important hurdle, namely the constitutionality check. In general, referendums have to be in accordance with the constitution of a country and, depending on the country, also with some international treaties of preeminent importance that cannot be terminated. Basically, constitutional courts are therefore permitted to test referendums. However, in some countries, such as Switzerland, the formal review of referendums is carried out by the parliament. Another aspect that one may also take into account is the timing of a compatibility check. In some countries referendums, to be allowed to proceed, are submitted to the court or to the parliament before the ballot. In other states, such as California (USA), a judicial review can also be implemented after an approval of referendum. This may also occur in Swiss cantons.

### **2.2.3 The intention of referendums**

It is also important to pay attention to the third criterion of referendums, namely their intention, which can either be proactive or reactive. Proactive referendums are used to alter the status quo by submitting a new idea to a popular vote. By contrast, reactive referendums aim to sustain policy stability<sup>32</sup>. There are two types of reactive referendums. The first type refers to facultative referendums, as described above. Facultative referendums can be requested by a group of citizens or by another representative body as a reaction to a policy change introduced by the governing majority. It is a democratic tool to veto the parliamentary resolution in favour of the status quo. The second reactive referendum is related to *counter-proposals*, which are very common in Switzerland.

A counter-proposal is a reaction of the establishment to an alteration of the status quo initiated by the citizenry. However, in some cases counter-

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32 ALTMAN, p. 8, 14.

proposals can also originate from a given number of citizens as a response to a parliamentary decree, which is subject to the facultative referendum<sup>33</sup>. Indeed, a counter-proposal must be seen as an alternative rather than an opposite vote to a referendum. It aims to alter the status quo too, but in a different and mostly less radical way than the original initiative. For the decision a counter-proposal is presented to the vote together with the citizens' initiative (or with a parliamentary decree that is subject to a facultative referendum), and the electorate has a choice between the original initiative, counter-proposal or both proposals, but with a tiebreak question that is used to determine which version should be implemented, should both proposals be approved. In this case, the participants on the ballot have either to decide in favour of the initiative or in favour of the counter-proposal.

Herewith it should be noted that an option of a counter-proposal is a clear sign of the existence of an indirect initiative procedure wherein the parliament and proponents of the citizens' initiative interact together. At this procedural stage a link between direct and representative democracy is established, which is indeed to be welcomed since direct democracy can thereby better realise its full potential<sup>34</sup>. In such a procedure the parliament as well as the government are obliged to debate the citizens' initiatives before they are placed on the ballot. The parliament is free to accept or to refuse a citizens' proposal. In case of a rejection, the initiative has to be submitted to the popular vote. And in case of parliamentary approval of the popular proposal, there is no popular vote on the citizens' initiative unless the popular proposal is subject to required referendums, for which a popular vote is then mandatory.

Another effect that an indirect initiative procedure causes is the possibility of a withdrawal of the citizens' initiative. Depending on the formal institutionalisation of citizen-initiated referendums (e.g. availability of a withdrawal clause), the parliament may propose a counter proposal and that may lead the proponents of the initiative to withdraw their proposal due to the partial fulfilment of their demand by the legislature. And even if a counter proposal by the authorities does not cause a withdrawal of the citizens' initiative by the initiative committee, voters can still choose between at least three substantive options: citizens' initiative, counter-proposal or tie-break question in support of one of these two options.

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33 The so called 'Volksvorschlag' in Canton of Bern, see Art. 63 par. 3, Constitution of Canton of Bern of June 6, 1993 (Cst-BE).

34 ROHNER GABRIELA, *Die Wirksamkeit von Volksinitiativen im Bund. 1848-2010* (Zürich/Basel/Genf 2012), p. 249-257 (cit. ROHNER).

In contrast to the described indirect procedure, within a direct initiative procedure the citizens' initiative bypasses the legislature and is placed directly on a ballot; there is no mutual give and take between the parliament and citizens<sup>35</sup>.

#### **2.2.4 The normative level of referendums**

Referendums generally refer to the jurisdiction of the parliament. This means an issue can only be subject to a popular vote if it is within the remit of the parliament. Regardless of the initiator of a single mechanism, the issue of a referendum can affect an amendment of constitutional or statutory (law) provisions. In some countries referendums are also used for other issues. Referendums can be held to dissolve the parliament, to recall the president or even for questions on the budget, and to grant public credits.

### **2.3 Constraints on mechanism of direct democracy**

After these theoretical explanations, it can be summarised that the current model of direct democracy is a set of legislative processes on public issues that enables citizens to make political decisions in conjunction with (plebiscites, authorities' referendums, mandatory referendums), against (citizens' facultative referendums) or without their elected representatives (citizens' initiative). It can be argued that the more citizens are able to control a referendum mechanism (asking and triggering) and the more binding its result, the more popular sovereignty is realised in a democracy.

Which different mechanisms of direct democracy a country has, if any, depends on its constitutional arrangements (rules in form). And how some of these tools are being used (rules in use) results from the strategic context wherein political actors act. The effect of referendums differs not only according to their initiator, character, intention, normative level and controlling features but also according to their further precise formal arrangements. Some procedural provisions can affect the implementation so strongly that even a veto player (mainly the citizenry, by citizens' initiative) who is in full control of the referendum (asking/triggering) loses the ability to veto the legislative outcome even before it is possible to cancel out the other veto players from the political game. In other words, procedural details can create an additional institutional framework wherein a veto player's nature of full control becomes superfluous. It is therefore important to note that within a single type of mechanism of direct democracy further procedural differences and formal hurdles with

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35 See also: IRI, p. 232, 233, 234, 237; IRI, Monitor, p. 28.

significant consequences can exist. To say it in DAVID ALTMAN's words, the devil is in the institutional detail<sup>36</sup>. And any detailed institutional provision, such as restrictions on turnout and approval, time limits, signature collection, specific rules for consideration of a referendum (e.g. preliminary or legality check<sup>37</sup>), or even the exclusion of some policy areas from being subject of a popular vote, might be a further cause diminishing the potential for policy change. And the more formal restrictions there are within a direct democratic mechanism, the greater the constraints on popular sovereignty.

It can therefore be assumed that any additional obstacle to direct democratic procedure leads to disappointment and, consequently, to a lack of interest in direct democracy among the people. In some countries obstacles such as the quorums, for instance, are established to foster both the participation and the legitimacy of the vote. However, they are more contraproductive than conducive to referendums and to direct democracy as a whole, as well. For the opponents of a referendum, quorums create an incentive to not participate in the corresponding ballot in order to void the outcome. Further, they impede every fertile political discourse that could arise between two political poles, and that could have strengthened a participatory culture, since democracy relies on a diversity of opinion that are potentially controversial. Within a direct democratic system not only the result of the referendum has to be legitimate but also the whole procedure, since a legitimate procedure that allows every single eligible citizen to be part of direct legislation automatically generates legitimate outcomes.

Thus, in the following chapters I do not only consider the mechanisms of direct democracy in the Baltic States according to their initiator, character, intention, normative level and controlling features but also according to further precise formal requirements that may diminish the people's will. Tables have been created to outline all possible direct democratic institutional arrangements for each Baltic State. Each table gives a structured overview of both the formal rules and the use of direct democracy since the beginning of 1990s.

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36 ALTMANN, p. 18.

37 By the parliament, committee or courts.

### **3 Legal framework and practice of direct democracy in Estonia**

#### **3.1 Direct democratic instruments in Estonia**

Direct democracy is not a new occurrence in Estonia. At national level the right of referendums and even of citizens' initiatives were already provided by the 1920 constitution, but in 1935 the interim president abolished these from the constitution, and only the provision of the presidential plebiscite was left<sup>38</sup>. In the end of 1980s, as the disengagement from the Soviets began, Estonian direct democracy underwent a revival. The implementation act of the 1992 constitution also contained provisions for citizen-initiated referendums, but only for a limited time of three years<sup>39</sup>. The wave of transition was not strong enough to maintain it beyond this period. Today, it is true that the current constitution requires the supreme power to be exercised by citizens with the right to vote by electing the Estonian Parliament (Riigikogu) and through a referendum<sup>40</sup>. However, a referendum as it has been framed in the new constitution can merely be activated automatically or top down (see *Table 1*)<sup>41</sup>. The constitution does still not provide for referendums initiated by citizens. The people (around 913,000 eligible citizens<sup>42</sup>) are introduced into the decision-making process as an additional veto player as long as there are parliamentary plebiscites or referendums that are required by the constitution. How and according to which procedure such referendums have to be held is provided by the Estonian 'Referendum Act' (ERA) that entered into force April 6, 2002<sup>43</sup>. This law itself may be passed and amended only by a majority of the members of the Riigikogu<sup>44</sup>. The management of the administration of direct democracy mechanisms is conducted by the National Electoral Committee (NEC)<sup>45</sup>. It should be noted that for all kinds

38 RUUS JÜRI, Estonia, in: KAUFMANN BRUNO/WATERS DANE M. (eds.), *Direct Democracy in Europe. A Comprehensive Reference Guide to the Initiative and Referendum Process in Europe* (Durham 2004), S. 54 (cit. RUUS in KAUFMANN/WATERS).

39 Art. 8, par. 2, Law on the Application of the Constitution of June 28, 1992 (LAC); MIKKEL EVALD/PRIDHAM GEOFFREY, *Clinching the 'Return to Europe': The Referendums on EU Accession in Estonia and Latvia*, *West European Politics* 27(4)/2004, p. 728 (cit. MIKKEL/PRIDHAM).

40 Art. 56, par. 1 and 2 of the Constitution of Republic of Estonia of July 3, 1992 (CE).

41 See also RUUS, Estonia, p. 48 f.

42 See, <http://www.vvk.ee/voting-methods-in-estonia/engindex/statistics> (accessed on 24.04.2012).

43 See, Art. 106, sec. 2 CE.

44 Art. 104 CE.

45 Art. 12, par. 1, sec. 1 Estonian Referendum Act of April 6, 2002 (ERA).

of referendums there are some restrictions concerning the time. As the ERA states, it is forbidden to initiate or to hold a referendum during a state of emergency or a state of war. Neither should a referendum be held at a time when fewer than 90 days remain before parliamentary elections<sup>46</sup>.

Before we consider the particular referendum mechanisms, it should be noted that Estonia is a uni-cameral parliamentary system with 101 representatives<sup>47</sup>. The president of the state is elected by the parliament<sup>48</sup>. However, he/she has a ceremonial role and the executive power is rather vested in the government of the republic<sup>49</sup>. In connection with direct democracy there is a particular function that the judicial power has to adopt. The Supreme Court is able to repeal the resolution of the Riigikogu concerning submission of a draft act or other national issue to a referendum<sup>50</sup>. According to the article 152 of the Estonian Constitution, 'the Supreme Court shall declare invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution'. Further, if the president of the republic refuses to proclaim a law passed by the parliament, he can return it together with a reasoned resolution to the Riigikogu for a new debate and decision, as is indicated in art. 107 CE. If the parliament again passes the returned law unamended, the president shall then proclaim the law or shall propose that the Supreme Court declare the law unconstitutional.

### **3.1.1 Referendums required by the constitution**

#### **3.1.1.1 The mandatory constitutional referendum**

The Estonian mandatory referendum is a proactive tool with the purpose of changing the status quo at the utmost normative level. According to article 162 CE, any change of provisions of chapter I (Art. 1-7) 'General Provisions', which establish the legal basis of Estonia as a democratic independent state, and any amendment of provisions of chapter XV (Art. 161-168) 'Amendment of the Constitution' of the constitution require a mandatory referendum. This means that the Riigikogu is obliged to submit such modifications to a popular vote automatically. Indeed, the automatic referendum introduces the people into the political game as one additional veto player. However, it does not authorise them to ask the question nor does it enable them to trigger the referendum. It should also be noted that

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46 Art. 3, par. 3 ERA, see also Art. 161, sec. 2 CE.

47 Art. 60, par. 1 CE.

48 Art. 78 CE.

49 Art. 86 CE.

50 Art. 8, par. 1 first sentence ERA.

the range of Estonian automatic referendums, which are open to a direct democratic process, is relatively narrow. As mentioned before, only few constitutional provisions have to be submitted to popular vote. At least, there are no further procedural restrictions that would constrain the sovereignty of the people. No specific threshold is needed for the participation, and the decision of the people in favour of the referendum has to be supported by a majority (over 50 %) of those who participate in the voting<sup>51</sup>. The decision of the citizenry is binding for all public bodies<sup>52</sup>. In case of a negative outcome of the ballot the corresponding issue cannot be initiated within one year after its rejection<sup>53</sup>.

### 3.1.2 Referendums from above

Beside the mandatory referendum that is needed for amendments of chapter I and XV of the constitution, there is also a top-down direct democratic mechanism (three different institutions) in Estonia, namely parliamentary *plebiscites* for draft acts to constitutional amendments, draft acts and other national issues<sup>54</sup>. As the article 105, sec. 1 CE states, it is the parliament that is entitled to submit a bill or other national issue to a referendum<sup>55</sup>. Following this wording the referendum can either be proactive to allow a policy change or reactive to keep the status quo<sup>56</sup>. In conjunction with article 65, par. 2 CE, the authority over triggering a referendum remains exclusively with the parliament. That means it is up to the Riigikogu to decide whether to hold a referendum or not<sup>57</sup>. This optionality of the top-down referendums further becomes obvious when we consider article 163 CE. Due to this provision, the constitution – other chapters than chapter I and XV<sup>58</sup> – shall either be amended by an act which has been passed by a referendum or by two successive sessions of the parliament. For all three types of plebiscites, the parliament is the one public authority that is also enabled to frame the proposal. One exception

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51 See Art. 2, par. 1 third sentence ERA.

52 Art. 4 ERA.

53 Art. 168 CE.

54 See Art. 1, par. 1 second sentence ERA.

55 See also Art. 65, par. 2 CE; LIIVIK ERO, Legitimacy through Direct Democracy in the EU Member State. Direct Democratic Initiatives in the Estonian Parliament, Proceedings of the Institute for European Studies 8/2010, p. 89 (cit. LIIVIK, Legitimacy); MIKKO LAGERSPETZ/MAIER KONRAD, Das politische System Estlands, in: ISMAYR WOLFGANG (eds.), Die politischen Systeme Osteuropas, 3<sup>rd</sup> edition (Wiesbaden 2010), p. 95 (cit. MIKKO/MAIER).

56 See also Art. 128, par. 2, sec. 2 of the Riigikogu Rules of Procedures and Internal Rules Act of February 11, 2003 (RRPIRA).

57 Art. 6, par. 1 ERA.

58 See HOFFMANN, Baltikum, p. 311.



to this rule is the right of the president. According to the constitution, the right to initiate (in the sense of asking) a constitutional amendment is also vested with the president<sup>59</sup>.

Despite the possibility of holding parliamentary plebiscites over those further issues, there are still some restrictions on the range of its objects. 'Issues regarding the budget, taxation, financial obligations of the state, ratification or termination of international treaties, the declaration or termination of a state of emergency, or national defence' as declared under article 106 CE shall not be submitted to a referendum<sup>60</sup>.

For the approval of parliamentary plebiscites, formally there is no minimum participation requirement necessary<sup>61</sup>. A law that passes by a majority of the participants in the voting has promptly to be proclaimed by the president of the republic. The decision of the referendum is binding on all state institutions<sup>62</sup> and it cannot be changed, nor can it be declared null and void through the parliament<sup>63</sup>.

#### **3.1.2.1 The parliamentary constitutional plebiscite**

The parliamentary constitutional plebiscite is an instrument to amend the constitution by popular vote in regular cases. According to article 161, section 1 CE, initiating constitutional amendments rests with not less than one-fifth of the membership of the Riigikogu and with the president of the republic<sup>64</sup>. One should be aware that initiating a constitutional draft act does not necessarily mean submitting it at the same time to a referendum. The triggering can automatically happen if such an initiated draft act is subject of 'General Provisions' and of the Chapter 'Amendment of the Constitution'<sup>65</sup>. Otherwise three-fifth of the parliamentary votes are necessary to submit the proposal to amend the constitution to a referendum<sup>66</sup>. A popular vote has to be held not earlier than three months after the passage of a resolution to this effect by the Riigikogu<sup>67</sup>. The constitutional plebiscite has to be adopted by the majority of the participants. An amendment to the constitution regarding the same issue

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59 Art. 161, sec. 1 CE.

60 See Art. 1, par. 1 and 2 ERA.

61 MIKKEL/PRIDHAM, p. 728.

62 Art. 105, sec. 2-3 CE, see also Art. 2, par. 1 and Art. 4 ERA.

63 LIIVIK, Legitimacy, 89.

64 See also Art. 78, par. 8 CE, Art. 103, par. 5 CE and Art. 122, par. 1 RRPIRA.

65 See Art. 162 CE.

66 See Art. 164 CE.

67 Art. 164 second sentence CE.



that has been rejected by the parliament or by a referendum may not be re-launched within one year<sup>68</sup>.

As stated, constitutional amendments can also be asked by the president. However, he or she is not entitled to submit the proposal to a referendum. For the triggering he/she needs the cooperation of the parliament. This division of controlling the parliamentary constitutional plebiscite is an essential characteristic of a system of checks and balances. The mutual control even exists within the parliamentary constitutional plebiscite mechanism, as the framing and triggering require two different quotas of members of parliament.

### **3.1.2.2 The parliamentary plebiscite for other draft acts and national issues**

Except constitutional plebiscites, the Riigikogu can also submit other draft acts or national issues to a referendum, as indicated above<sup>69</sup>. Initiating a referendum in order to pass a draft act or decide on other national issues rests with members, factions and committees of the parliament<sup>70</sup>. Besides parliamentary organs, also the government of the republic is entitled to initiate laws<sup>71</sup>. In order to submit a draft act for laws or other national issues to a referendum, a majority of the votes of the members of the parliament in favour is required<sup>72</sup>. As in the case of parliamentary constitutional plebiscites, there is no unique political actor who has full control over the referendum procedure. Asking and triggering are made by two different parliamentary groups.

A plebiscite for draft acts and other national issues has to be supported by the majority of the participants in the vote<sup>73</sup>. However, there is a confusing provision for a referendum on draft acts. The fourth section of the article 105 CE establishes 'if a bill which is submitted to a referendum does not receive a majority of votes in favour, the president of the republic shall declare extraordinary elections to the Riigikogu'<sup>74</sup>. This means, in case of a negative outcome the whole parliament has to be dissolved and new elections set. Such a provision does not exist for referendums on other national issues<sup>75</sup>.

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68 Art. 168 CE.

69 Art. 105, sec. 1 CE.

70 Art. 128, par. 1, section 1-3 RRPIRA; see also Art. 103, par. 1-3 CE.

71 Art. 103, par. 4 CE.

72 Art. 129, par. 7 and Art. 130, par. 2 RRPIRA.

73 Art. 105, sec. 2 CE.

74 see also Art. 78, par. 3 CE and Art. 64 ERA.

As LIIVIK and many Estonian scholars correctly note, section 4 of article 105 CE curbs the parliament's enthusiasm and leads to a hesitation of its will to put any draft acts to a referendum<sup>76</sup>. From a political viewpoint, a deputy avoids supporting such referendum intentions because of the uncertainty of the re-election. It is risky to hold a referendum if the issue put to it might not reach the majority of the participants who would be in favour of it in the voting, and new parliamentary elections may have to be held. Estonian legal scholars agree that such a rule as mentioned above will make the rest of the article 105 CE superfluous<sup>77</sup>. It is also important to note that this provision, which causes extraordinary elections, clearly goes far beyond any sense of direct democracy. Such large political consequences of a negative outcome of a single referendum do not appear to be appropriate, especially if it refers to an amendment to a law.

### **3.1.3 Citizen-initiated referendums**

Citizen-initiated referendums were present in the Estonian constitution before 1940<sup>78</sup>. Article 87 of the constitution of 1920 foresaw some bottom-up mechanisms for the Estonian people. Due to the authoritarian regime, however, it had never worked in practice<sup>79</sup>. Also, the implementation act of the constitution enabled the 10,000 eligible citizens to initiate amendments to the constitution during the three years following the adoption of the constitution by a popular vote in 1992<sup>80</sup>. Within this period one draft act on amending the constitution with two aims (fixing the retirement and popular elections of the president) was proposed by the Estonian citizens. However, the parliament rejected their proposal<sup>81</sup> since, legally, it was not obliged to submit it to a popular vote<sup>82</sup>.

There is no such provision in the current constitution. The Estonian people do not possess the right to initiate proposals. According to the article 162 CE, general provisions and the chapter on 'Amendment of the Constitution' must be put to a referendum. However, the Estonian constitution contains no explicit rules about popular initiatives from

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75 LIIVIK ERO, Referendum in the Estonian Constitution: Historical and Comparative Constitutional Aspects, *Juridica International* XVIII/2011, p. 26 (cit. LIIVIK, Referendum).

76 LIIVIK, Legitimacy, p. 89; LIIVIK, Referendum, p. 25.

77 See LIIVIK, Legitimacy, p. 89.

78 LIIVIK Referendum, p. 19.

79 RUUS in KAUFMANN/WATERS, p. 54.

80 Art. 8, par. 2 LAC.

81 LIIVIK, Legitimacy, p. 91.

82 Art. 8, par. 1 and 2 LAC.

below<sup>83</sup>. As noted before, pursuant to article 103, par. 1–5, CE the right to initiate a law is exclusively limited to a member, a faction or a committee of the Riigikogu, as well as to the government and the president of the republic. And the right to initiate a referendum is limited to a parliamentary member, a faction and committee<sup>84</sup>. From this point of view, it can be assumed that the Estonian people have limited authority over direct democratic politics. Indeed, due to required referendums or possible parliamentary plebiscites, Estonians are introduced into the legislative procedure as one additional veto player. But, the arrangements of direct democratic rules in the Republic of Estonia are not strong enough to exercise the supreme power in full, and hence Estonians continue to remain theoretical holders of political power.

Several attempts have been made by different parts of the parliament to re-introduce citizen-initiated referendums or to use plebiscites, as they already exist, but all these attempts have been blocked by the governing parties or a lack of interest<sup>85</sup>. As LIIVIK' notes, three attempts (2003, 2005, 2008) have been made to legalise the popular initiative. In the third case, 24 deputies of the Estonian Centre Party initiated a draft act to amend the constitution in a way that would make popular initiatives possible. According to the draft, 25,000 eligible citizens would have the right to initiate an act. An amendment of the constitution by the popular initiative was not foreseen. And as for parliamentary plebiscites for draft acts, some issues as listed under art. 106 CE would also have been excluded from the range of issues of a popular vote. Nevertheless, the draft act to legalise the popular initiative has been rejected by previous members of the Estonian Parliament<sup>86</sup>.

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83 Ruus, Estonia, p. 49.

84 Art. 129, par. 6 RRPIRA.

85 LIIVIK, Legitimacy, p. 91 ff.

86 LIIVIK, Legitimacy, p 91 f.

Table 1: Direct Democratic Institutions and their Use in Estonia (1991–2012)

MECHANISM OF DIRECT DEMOCRACY <sup>7</sup>	NAME OF DD INSTITUTION	SUBJECT MATTER	SUBMITTED DUE TO	CHARACTER	INTENTION	POL. ACTOR / VETO-PLAYER <sup>1</sup>		FORMAL RESTRICTIONS FOR						Use q / a / ai <sup>2</sup>
						ASKING (FRAMING)	TRIGGERING	TURNOUT	APPROVAL	SIGNATURES	COLLECTION TIME	COLLECTION PLACE	RANGE OF ISSUES	
 REQUIRED	Mandatory constitutional referendum	to alter the provisions of chapter I and XV of the constitution	law	binding	proactive	parliament	automatic	no	>50% of participants <sup>3</sup>	–	–	–	yes only for referred issues	1 / 1 / 0
 TOP-DOWN	Parliamentary constitutional plebiscite	to amend the constitution in regular cases	parliament	binding	proactive / reactive	>1/5 of the parliament <sup>9</sup> or president	>3/5 of the parliament	no	>50% of participants <sup>3</sup>	–	–	–	yes <sup>8</sup>	3 <sup>6</sup> / 2 / 0
	Parliamentary plebiscite for draft acts	to initiate a law	parliament	binding	proactive / reactive	parliamentary member, faction, committee, government	>1/2 of the parliament	no	>50% of participants <sup>4</sup>	–	–	–	yes <sup>8</sup>	0 / 0 / 0
	Parliamentary plebiscite for other national issues	to initiate a national issue	parliament	binding	proactive / reactive	parliamentary member, faction, committee	>1/2 of the parliament	no	>50% of participants	–	–	–	yes <sup>8</sup>	0 / 0 / 0
 BOTTOM-UP <sup>5</sup>	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Total Votes														4 / 3 / 0

**Remarks**

1: The possibility of a referendum introduces the citizens as one additional veto player into the public legislative process. A veto player is an individual or collective actor whose agreement is needed for a change in the legislative status quo. If an existing or latent veto player controls **both** the framing of the proposal and the triggering of the referendum, other veto players lose their ability to veto outcomes, the number of veto players decreases and potential of policy change increases (HUG/TSEBELIS, 2002)

2: q / a / ai = quantity of referendums / approved / approved but invalid due to precise formal restrictions

3: In case of a negative outcome the corresponding issue cannot be initiated within one year after its rejection

4: If a bill submitted to referendum does not receive the majority of the votes in favour, the president shall declare extraordinary elections to the parliament. This legal provision is deemed a further formal restriction.

5: The implementation act of the 1992 constitution provided under Art. 8, sec. 2 the right of popular initiative for constitutional amendments for three years

6: One of them refers to the referendum on independence (1991)

7: Time limits: no referendums during a state of emergency or a state of war. And no referendums should be held when less than 90 days remain until parliamentary elections

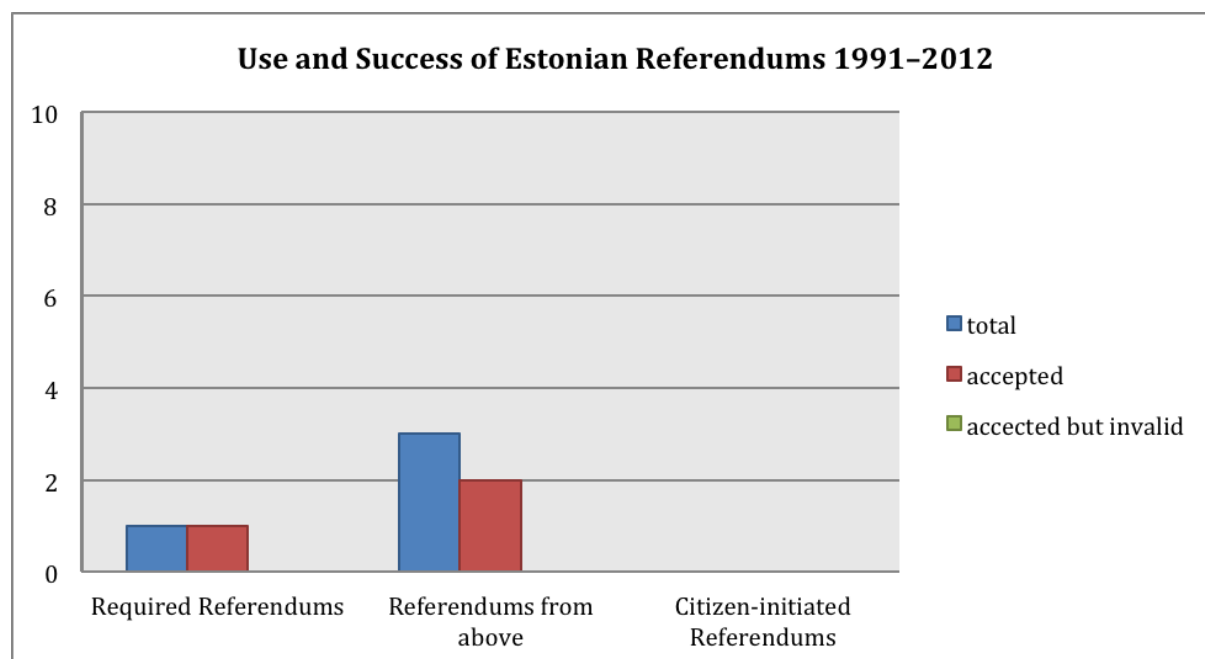
8: Issues according to Art. 106 CE

9: The Estonian single-chamber parliament has 101 members (Art. 60 CE)

### 3.2 Estonian direct democracy in practice

Estonia is a weak practitioner of direct democracy. According to the c2d database<sup>87</sup>, from 1991 to 2012 four referendums have been held there (see also *Table 1* and *Figure 1*). It should be noted that only one referendum has been held after the approval of the new constitution; the other three referendums had been held before. Of these four referendums, three succeeded in full, while one popular vote failed.

**Figure 1:**



The referendum on independence and two referendums concerning the constitutional draft during the transition period were parliamentary plebiscites that were framed and submitted to a vote by the parliament. By contrast, the EU accession referendum in 2003 was a mandatory constitutional referendum that had to be submitted automatically to a popular vote, as prescribed by article 162 CE.

The number of referendums that have been held in the last twenty years is obviously very limited and none of them were bottom-up initiated. Issues that the four referendums mainly dealt with refer to the organisation of the state, such as national identity, citizens' rights, and the political system or to foreign policy, namely, European integration. All four referendums are subject to constitutional norms. No proposal below constitutional normative level has been submitted to a referendum, although according to the article 105 CE the parliament would have the right to put a bill to a popular vote.

#### 3.2.1 The referendum of 3 March 1991 on Estonia's independence

The parliamentary plebiscite on independence that was held in a critical and volatile time shows that the Baltic States did not want to be a part of the new

<sup>87</sup> Results on c2d database: [www.c2d.ch](http://www.c2d.ch) (accessed on 19.12.2012).

Soviet Union. In the beginning of 1990s, Michael Gorbachev was increasingly squeezed between democrats, reformers, and independence-oriented republics on the one side and a sceptical and recalcitrant party and 'apparat' on the other side. To obtain the authority he needed to keep the Soviet Union intact he turned to the public. Gorbachev tried to exert pressure on the fifteen Soviet Republics<sup>88</sup> to sign a new 'Union Treaty' by holding a referendum on the preservation of the Union of Soviet Socialist Republics on 17 March 1991. But, the parliaments of the Baltic States, Georgia, Armenia and Moldavia demonstrated their ability to avert this Muscovite claim by adopting resolutions against the union referendum. Estonia, Latvia, Lithuania, Georgia and Armenia went even further and held referendums on independence in their own way<sup>89</sup>. And Moldavia boycotted Gorbachev's referendum that intended to keep the Soviet Union in one piece<sup>90</sup>. The nine other republics took the more moderate but still disruptive step of either changing the question of Gorbachev's union referendum or adding questions of their own<sup>91</sup>.

In Estonia, the question that was put to the referendum was: 'Are you in favour of re-establishing the national independence of the Republic of Estonia?' The required turnout of 50 percent had been exceeded, with 82.9 percent participating in the vote. 78.4 percent of the voters voted in favour of national independence and a no-vote was cast by 21.6 percent of those answering the question<sup>92</sup>. The percentage of those voting against independence shows the loyal and pro-union forces among the adult population of Estonia<sup>93</sup>. The fact that more than 20 percent of the citizens voted against the independence of Estonia is too large a minority to be ignored. Insofar, it is an essential task for the new Estonian State to integrate them peacefully into the legal and social life.

### 3.2.2 The referendum of 28 June 1992 on the constitution

After Estonia regained independence, a constitutional assembly, which was composed of 30 members elected by the Estonian Congress and 30 members elected by the Supreme Council, prepared a draft constitution to restore Estonia's statehood on the basis of legal succession. The question was to define what kind of nation-state Estonia should be, what form of government it should have and what policies should be followed. With regard to the form of government, four proposals were discussed. At the end, the general assembly decided for a parliamentary system with a moderate presidency. The constitution was put to the people on 28 June 1992<sup>94</sup>. To be approved, a minimum of 50 percent

88 Estonia, Latvia, Lithuania, Georgia, Armenia, Moldavia, Kazakhstan, Kirghizia, Uzbekistan, Ukraine, Russia, Azerbaijan, Belorussia, Tadjikistan and Turkmenistan.

89 RUUS, Estonia, p. 51; RUUS in KAUFMANN/WATERS, p. 56; see also BRADY HENRY E./KAPLAN CYNTHIA S., Eastern Europe and the Former Soviet Union, in: BUTLER DAVID/RANNEY AUSTIN (eds.), Referendums around the World. The Growing Use of Direct Democracy (Washington D.C. 1994), p. 186-201. (zit. BRADY/KAPLAN).

90 The Referendum Scorecard, The Economist [London, England], 23 March 1991, p. 62.

91 BRADY/KAPLAN, p. 187 f.

92 Detailed results on c2d database, [http://www.c2d.ch/detailed\\_display.php?Iname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=38754](http://www.c2d.ch/detailed_display.php?Iname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=38754) (accessed on 21.06.2012).

93 RUUS, Estonia, p. 52.

94 RUUS, Estonia, p. 53 f.; RUUS in KAUFMANN/WATERS, p. 57; MOLE RICHARD C. M., The Baltic States from the Soviet Union to the European Union. Identity, Discourse and Power

participation was required. Around 67 percent of all eligible voters went to the polls and the parliamentary plebiscite was approved by a majority of 92 percent<sup>95</sup>.

### **3.2.3 The referendum of 28 June 1992 on voting rights for those who do not yet have citizenship status**

In addition to the referendum question on the Estonian constitution that was put to the people, eligible Estonian citizens were also asked whether people who had applied for citizenship before 5 June 1992 should obtain the right to participate in the first parliamentary and presidential elections after the ratification of the constitution. The parliamentary plebiscite, however, was defeated by a vote of 53 percent<sup>96</sup>.

Putting the additional question to the vote and the subsequent rejection by the people caused some domestic and foreign policy conflicts. The West interpreted the no-decision of the voters as a discrimination against Russians residing in Estonia and as a violation of their human rights<sup>97</sup>. Concerning integration of the minorities, as already mentioned above, the additional question may not have been a wise step towards fostering a peaceful coexistence.

### **3.2.4 The referendum of 14 September 2003 on the accession to the European Union**

Since the constitution came into force, the referendum on Estonia's accession to the European Union has been the only official popular vote. Before Estonia joined the European Union some parts of the constitution had to be altered<sup>98</sup>. The Estonian parliament submitted one single question and enacted a constitutional law for the accession to the European Union according to the articles 105, 162, 163, 164 and 167 of the constitution. The ballot question of the mandatory constitutional referendum that was put to popular vote stated: 'Are you in favour of accession to the European Union and the amendments to the Constitution of the Republic of Estonia?' Only Estonian citizens had the right to vote and a significant number of Russian minorities were left out<sup>99</sup>. A yes vote was cast by 66.8 percent, with a turnout of 64.1 percent<sup>100</sup>. According to some opinion polls, the Estonian people were initially sceptical about joining the EU<sup>101</sup>. The final result

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- in the Post-Communist Transition of Estonia, Latvia and Lithuania (London/New York 2012), p. 96 (cit. MOLE).
- 95 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=37908](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=37908) (accessed on 21.06.2012).
- 96 Results on c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=38964](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=38964) (accessed on 22.06.2012).
- 97 RUUS, Estonia, p. 55; Leftovers, The Economist [London, England], 18 July 1992, p. 41.
- 98 LIIVIK, Legitimacy, p. 89.
- 99 MIKKEL/PRIDHAM, p. 729.
- 100 see c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=37874](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=37874) (accessed on 22.06.2012).
- 101 Compare PETTAI VELLO, Estonia, European Journal of Political Research 43/2004, p. 997 (cit. PETTAI); VETIK RAIVO, Elite vs. People? Eurospceptic Public Opinion in Estonia, Cambridge Review of International Affairs, 16(2)/2003, p. 258 (cit. VETIK).



of 66.8 percent yes votes could however be seen as a solid approval of European Integration<sup>102</sup>. Liivik's answer to this change of voter opinion is based on the referendum's essential function itself. According to him, the referendum, for one, substantially increased the citizens' factual knowledge about the EU and the country's real political choices through debates or newly available information sharing. And secondly, it was the instrument that had legitimized the process of decision-making about integration into the EU. It should also be mentioned that there was a huge pro-accession campaign made possible by considerable financial resources spent by the Estonian government and the local EU delegation office<sup>103</sup>. Compared to other EU citizens, Estonians now are more optimistic concerning the EU, as the Eurobarometer survey (No. 73, Spring 2010) shows. They have a great deal of confidence in the EU<sup>104</sup>.

### **3.2.5 Rejected draft acts in the Estonian parliament**

In addition to the referendum on EU accession, the parties of the Riigikogu put forward two other draft acts. But, the majority of the parliament rejected both proposals. One draft act concerned legalizing direct presidential elections and the other aimed to hinder the privatisation of the Estonian electric power plants by international investors<sup>105</sup>.

Since then there have been other attempts by different parties to put some issues to a referendum, but these have also been rejected: policies about developing nuclear energy or holding extraordinary elections of the parliament. The Estonian Green Party managed to get into the Riigikogu in 2007, and two years later they initiated a draft bill to enact local popular initiatives, by both submitting new bills and vetoing the acts in force. The Estonian Green Party is one of the strongest supporters of direct democracy, aiming to contribute to the people's participation in the local decision-making process, and by doing so, reducing the people's alienation from power and the governing processes<sup>106</sup>.

### **3.3 Explanations for the Estonian practice**

After the overview of the existing practice of direct democracy, it can be argued that referendums have only rarely been held within the last two decades. There are two main factors that explain the low frequency of this direct democratic instrument. From a structural view, it is the institutional legal framework that constrains the citizens' ability to be directly involved in the public decision-making procedure. And from an informal approach, it is the political culture of elites and voters. Those with political influence and governing parties in the parliament showed little interest in applying and extending direct democracy, as yet. Post-communist elites have been extremely hesitant about using referendums<sup>107</sup>. Generally, the use of direct democratic instruments and the extension of newer institutions depend on how the political elite and the recent constitutional framework interact.

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102 MIKKEL/PRIDHAM, p. 716.

103 PETTAI, p. 997.

104 LIIVIK, Legitimacy, p. 90 f.

105 LIIVIK, Legitimacy, p. 92.

106 LIIVIK, Legitimacy, p. 92 f.

107 MIKKEL/PRIDHAM, p. 728.



### 3.3.1 Legal constraints

Structural factors, such as formal institutions, are legal rules that shape the public actors' behaviour within a procedure in different ways. With regard to direct democratic mechanisms in Estonia there are four main factors affecting the citizens' participation in legislation. The first shaping factor stems from the type of direct democracy mechanism itself. As shown above, in Estonia referendums are either initiated by constitution or by parliament top down. Hence, Estonian direct democracy is a parliamentary plebiscite, wherein the majority of the Riigikogu decides if and, if yes, when and which issue shall be submitted to a referendum. The lack of citizen-initiated referendum arrangements in the constitution apparently constricts the use of direct democracy and thus the will of the people. All attempts from the opposition parties to modify the constitution in order to legalise the popular initiative nationwide have been rejected by governing majorities in the Riigikogu.

A second constitutional constraint concerns the subject matter of a referendum. There are many restrictions on the range of issues. Indeed, referring to the article 162, an automatic referendum happens if the chapters 'General Provisions' and 'Amendment of the Constitution' have to be amended. Estonian legal provisions on referendums not only exclude a certain number of constitutional issues from being subject to a popular vote but also further statutory issues concerning budget, taxation, financial obligations of the states, ratification and termination of international treaties, the declaration or termination of a state of emergency or national defence<sup>108</sup>. Some of these issues would presumably deserve to be part of a direct democratic mechanism as they directly shape the daily life of the citizens.

A third limitation of the application of direct democracy concerns the *interaction* of the legal framework with governing elites. Indeed, the Riigikogu could submit a bill or other national issues to a referendum as indicated in Art. 105, sec 1 CE. But at the same time the fourth section requires the dissolution of the parliament if such a draft put to referendum does not receive a majority of the votes in favour. The analysis of the Estonian practice thus approves the assumption that 'no parliament would risk holding a referendum if the issue put to it may fail and new parliamentary elections may have to be held'<sup>109</sup>. The last restriction caused by institutional arrangements refers to time limits. On the one hand, there is a waiting period of one year for the same constitutional issue that has been rejected by the parliament or by a referendum<sup>110</sup>. On the other hand, for any kind of referendum it is prohibited to hold a popular vote when less than 90 days remain until parliamentary elections<sup>111</sup>. Regarding formal restrictions, Estonia can in any case be commended for its turnout and approval requirements. At least these legal provisions do not make the citizens' access to direct democracy difficult. Both required and referendums from above do not have to meet high approval requirements in order to be valid. Nor has a participation quorum to be met. The status quo can already be overturned if the majority of the participants are in favour of a policy change.

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108 See, Art. 106 CE.

109 LIIVIK, Legitimacy, p. 89.

110 Art. 168 CE.

111 Art. 3, par. 3 ERA.

### 3.3.2 Informal constraints

Although the Estonian constitution constrains the use of direct democracy formally, the Estonian political parties in parliament were free to open constitutional provisions towards more direct democracy. But, after independence Baltic elites established a new political and societal order wherein no direct democratic procedures were present to constrain their legal preferences. They were relatively free to define the legal framework wherein they wanted to act as a political authority. This was also the case in Estonia. Nowadays the new institutions have become more useful for the political parties and not for the Estonian people<sup>112</sup>. In other words, Estonian institutions of direct democracy that have been generated are restrictive and they continue to exclude some political actors, such as the voters, from the direct decision-making process. By contrast, political establishment is continuing to gain advantage from the existing arrangements.

As ERO LIIK points out, political elites in Estonia have showed little interest in strengthening direct democracy, as yet; they rather support representative parliamentary democracy. Moreover, as he notes, the Estonian proportional party system is working rather in a majoritarian decision-making style. Negotiating with the opposition to find a consensus is considered as a sign of weakness in Estonian political culture<sup>113</sup>. On the other hand, most political parties still perceive, in an elitist sense, that more progressive policies would be attained within a framework of representative institutions<sup>114</sup>. Finally, a major issue impeding direct democracy is a political question: Any enhancement of direct democracy such as legalising citizen-initiated referendums (e.g. citizens' facultative referendum and citizens' initiative) by the political elite would simultaneously imply a restriction of their own existing authority. Hence, even if there is a stronger civil society than twenty years ago and even if there are some democratic shifts towards a new political culture after the break with the communist past, the current constitution as it is framed and the majority of the elite are still denying their citizens access to a more radical direct legislation.

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112 MØLLER, p. 291 f.

113 LIIK, Legitimacy, p. 94 ff.

114 RUUS, Estonia, p. 60.

## 4 Legal framework and practice of direct democracy in Latvia

### 4.1 Direct democratic instruments in Latvia

The current constitution (Satversme) of the unitary parliamentary (100 representatives<sup>115</sup>) Republic of Latvia, which had been adapted by the Constitutional Assembly of Latvia on 15 February 1922 and renewed in 1993, confers on the Latvian citizens not only the right to participate in parliamentary elections but also to take part in national referendums, as stated by article 80 of the constitution of Latvia (CLv). Compared to Estonia, there are not only automatic or top-down referendums but also some arrangements for bottom-up direct democracy mechanism by which the citizens of Latvia are able to stimulate legislation process actively<sup>116</sup>. According to the article 64 of the Satversme, 'the Saeima [Latvian Parliament] and also the people have the right to legislate, in accordance with the procedures, and to the extent provided for by [the] Constitution'<sup>117</sup>. All specific techniques and procedures of Latvian direct democracy are regulated by the 'Law on National Referendums and Legislative Initiatives and European Citizens' Initiative' (LoNRLIaECI), which was adopted by the parliament on 31 March 1994. Since then, this law has been altered several times. The last extensive revision, caused inter alia by the introduction of the European Citizens' Initiative, was made in November 2012. Pursuant to article 3 of the LoNRLIaECI, the Central Election Commission of Latvia (CECLv) prepares and supervises national referendums.

The contemporary Latvian constitution provides a total of eight different direct democratic tools (see *Table 2*). They are all legally binding. However, as GITA FELDTHUNE notes, neither the constitution nor the LoNRLIaECI provide any legal obstacles that could prevent the parliament from readopting a law that has been repealed by the citizens. In fact, also a popular initiated issue adopted by a referendum could be amended by the parliament thereafter<sup>118</sup>. But, this should not necessarily be considered as negative. It rather reflects a vital legislation that can be corrected every time by both the parliament and citizens.

The eight different direct democratic instruments can be categorised into three mechanisms of direct democracy as follows:

#### 4.1.1 Referendums required by the constitution

The Latvian constitution contains two types of mandatory referendums: a mandatory referendum for some specific constitutional amendments and another one for the accession to the European Union. Generally, such referendums are framed by the parliament and triggered automatically since the law prescribes its submission to a popular vote for it to become legally binding. However, the framing of a mandatory referendum can also be initiated by the Latvian citizens since there is a proactive citizen-initiated mechanism in Latvia. In such cases we refer rather to citizens' constitutional referendums.

115 Art. 5 Constitution of the Republic of Latvia of February 15, 1922 (CLv).

116 Art. 2 of Law on National Referendums and Legislative Initiatives and European Citizens' Initiative of March 31, 1994, (LoNRLIaECI) lastly amended on 8 November 2012.

117 See also Art. 65, 78 CLv.

118 FELDTHUNE p. 80.

**4.1.1.1 The mandatory constitutional referendum**

The mandatory constitutional referendum is a proactive popular vote that is called automatically under specific circumstances, as defined in the Latvian constitution.

In general, any amendment of a constitutional provision requires a qualified majority of two-thirds of the members of parliaments who are present. And for any alteration, three sittings are required, wherein at least two-thirds of the total members should participate<sup>119</sup>. A higher qualified majority than these requirements is prescribed for an amendment of such issues that are stated under article 77 CLv. According to this article, 'if the Saeima has amended the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution, such amendments, in order to come into force as law, shall be submitted to a national referendum'<sup>120</sup>.

The first chapter of the constitution of Latvia concerns the General Provisions. It constitutes the fundamentals of the state, such as the form of government of the state (Art. 1 CLv), the people's sovereignty (Art. 2 CLv), domestic territorial borders (Art. 3 CLv) as well as the language and national symbols of the Republic (Art. 4 CLv). Any amendment concerning those articles requires a national referendum in order to come into force as law (required referendum). This rule also applies to the stated sixth article, which defines the procedure of the parliamentary elections and the pattern of the electoral system. Any other constitutional provision is excluded from being a subject of required referendums.

A mandatory constitutional referendum on such issues has to be held not earlier than one month before and not later than two months after the date when the Saeima has adopted any of these articles<sup>121</sup>. According to the first section of article 79 CLv, a constitutional amendment shall be adopted if at least half of the electorate has approved it. There are around 1,545,000 electors<sup>122</sup> in Estonia. Without a doubt, this quorum is a very high approval restriction that strongly limits the sense of direct democracy. Indeed, there is no formal participation threshold. Nevertheless, to reach an approval of 50 percent of all voters a factual turnout arises and, depending on the approval quorum, it can theoretically range from at least 50 percent to even 100 percent. Compared to Estonian approval prescription (majority of the participants), the Latvian quorum for a constitutional amendment to be adopted is in this respect much stricter.

**4.1.1.2 The mandatory referendum on EU-Accession**

Until 2003 the constitution did not include any legal provisions for referendums on international matters. With the aim of providing a clearer legal basis for referendums on joining the European Union (EU) or changing the terms of participation in the EU, and for the reason that a membership of Latvia in the EU would formally modify the sense of the concept of independence and sovereignty as they are expressed in articles 1 and 2 (CLv)<sup>123</sup>, the parliament had to amend

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119 Art. 76 CLv.

120 Art. 77 CLv; see also Art. 1, par. 1 and Art. 4, par. 1 LoNRLLaECI.

121 Art. 4, par. 2 LoNRLLaECI.

122 see Central Election Commission of Latvia, <http://www.tn2012.cvk.lv/> (accessed on 06.05.2012).

123 UŠACKA, 96.

articles 68 and 79 of the constitution and the corresponding law on 8 May 2003<sup>124</sup>. But this was not the only reason to amend the law. As GATE FELDHUNE states, by changing the acceptance quorum the government also wanted to avoid risking the accession decision<sup>125</sup>. The revised article 68 CLv now stipulates that a 'membership of Latvia in the European Union shall be decided by a national referendum, which is proposed by the Saeima'<sup>126</sup>. The new formulation of article 68 CLv is also a legal foundation specifying that withdrawal from the EU would also be subject to this mandatory referendum<sup>127</sup>.

In order to be accepted, the number of the participants in the ballot must at least be half of the voters who had participated in the previous parliamentary election, and the referendum in favour of membership of Latvia in the EU has to be supported by the majority of these<sup>128</sup>. Although the membership formally modifies the sense of independence and popular sovereignty, the turnout and approval quorum for the accession referendum are less strict than the quorum for mandatory constitutional referendums that are required for any alteration of article 1 (independence) and 2 (popular sovereignty) of the constitution.

#### **4.1.2 Referendums from above**

The Latvian constitution contains three different types of referendums that can optionally be asked by the public authorities. All three referendums are legally binding, but with different intentions and aims. There is also a variation with regard to the actor who asks and triggers the referendum, and also with regard to further formal restrictions.

##### **4.1.2.1 The parliamentary plebiscite for changes in EU membership**

The parliamentary plebiscite for changes in EU membership is the first popular vote procedure that is launched from above. It is an authorities' referendum triggered by the parliament to confirm legal significant alterations related to EU membership. In addition to the automatic 'Referendum for EU-Accession' article 68, sec. 4 CLv states that 'substantial changes in the term regarding the membership of Latvia in the European Union shall be decided by a national referendum if such a referendum is requested by at least one-half of the members of the Saeima'<sup>129</sup>. With regard to its intention, this referendum can be both proactive and reactive: proactive to get popular legitimation for a corresponding policy change launched by the one half of the parliament and a reactive plebiscite triggered by the parliamentary opposition to find popular support for a return to the status quo.

To be approved, the constitution states 'substantial changes in the terms regarding such membership submitted for a national referendum shall be deemed adopted if the number of voters is at least half of the number of electors that participated in the previous Saeima election and if the majority has voted in favour of the draft law, membership of Latvia in the European Union or

124 IKSTENS JANIS, Latvia, European Journal of Political Research 43/2004, p. 1056; MIKKEL/PRIDHAM, p. 730.

125 FELDHUNE, p. 77.

126 Art. 68, sec. 3 CLv; Art. 1, par. 5 and Art. 11, par. 3 LoNRLIaECI.

127 FELDHUNE, p. 82.

128 see Art. 79, sec. 2 CLv.

129 see Art. 68, sec. 4 CLv; Art. 1, par. 6 and Art. 11, par. 4 LoNRLIaECI.

substantial changes in the terms regarding such membership'<sup>130</sup>. These requirements are the same as asked for a mandatory referendum on EU accession.

#### **4.1.2.2 The Semi-plebiscite on repealing a law**

The semi-plebiscite on repealing a law is a direct democratic institution to abolish parliamentary resolutions that are below the constitutional normative level. It is a reactive referendum intending to sustain the status quo. In the terms of article 72 CLv, 'the President has the right to suspend the proclamation of a law for a period of two months. The President shall suspend the proclamation of a law if so requested by not less than one-third of the members of the Saeima. This right may be exercised by the President, or by one-third of the members of the Saeima, within ten days of the adoption of the law by the Saeima. The law thus suspended shall be put to a national referendum if so requested by not less than one-tenth of the electorate. If no such request is received during the aforementioned two-month period, the law shall then be proclaimed after the expiration of such period. A national referendum shall not take place, however, if the Saeima again votes on the law and not less than three-quarters of all members of the Saeima vote for the adoption of the law'<sup>131</sup>. In other cases a national referendum for repealing the suspended law has to be held not earlier than one month before and not later than two months after the day of the announcement of the referendum<sup>132</sup>.

The 'repealing referendum' could either be considered as a plebiscite or as a citizens' facultative referendum to veto a law which has been framed by the parliament. However, due to its different triggering actors it is neither a full plebiscite nor a full citizen-initiated facultative referendum. To some extent there is an overlapping of two mechanisms of direct democracy. On the one hand, it has to be triggered either by the president or by one-third of the members of the parliament and, on the other hand, a national voting takes place only if so requested by not less than one-tenth of the electorate<sup>133</sup>. It is, therefore, a joint action of oppositional public authorities and the electorate<sup>134</sup>. However, since triggering of the referendum by the citizens can only occur if the authorities have called for the suspension of the proclamation of a law, I rather allocate this type of referendum – by naming it a *semi-plebiscite* – to the direct democracy mechanism that is launched from above.

In case of a request to repeal the suspended parliamentary law, a limit of 30 days is set to collect signatures of one-tenth of the electorate<sup>135</sup>. Signatures can be collected at collection stations that are set up in each city and municipality. Legally, at least one station per 10,000 voters must be available<sup>136</sup>. However, 30 days for collecting ten percent of the electorate's signatures is a relatively short time. After the expiration of 30 days the Central Election Commission of Latvia (CECLv) counts signatures, records results and notifies the president of the

130 Art. 79, sec. 2 CLv.

131 see also Art. 1, par. 3 LoNRLIaECI.

132 Art. 10, par. 2 LoNRLIaECI.

133 Art. 72, sec. 2 CLv; Art. 1, par. 3 LoNRLIaECI.

134 FELDHUNE, p. 80.

135 Art. 7, par. 1 LoNRLIaECI.

136 Art. 7, par. 2 LoNRLIaECI.



results. And if not less than one-tenth of the eligible citizens have signed the signatures sheets, the CECLv then announces a national referendum within three days<sup>137</sup>.

Concerning the definitive abolition of such a suspended law, article 74 CLv states, 'a law adopted by the Saeima and suspended pursuant to the procedures specified in article seventy-two [of the constitution] shall be repealed by the national referendum if the number of voters is at least half of the number of electors that participated in the previous Saeima election and if the majority has voted for a repeal of the law'.

With regard to the policy area of 'repealing referendum', there are some issue restrictions, as required by article 73 CLv. Namely, 'the Budget and laws concerning loans, taxes, customs duties, railroad tariffs, military conscription, declaration and commencement of war, peace treaties, declaration of a state of emergency and its termination, mobilisation and demobilisation, as well as agreements with other nations may not be submitted to national referendum'. And further, also urgent laws according to the article 75 CLv may not be submitted to a national referendum.

#### **4.1.2.3 The presidential plebiscite on recalling parliament**

The presidential plebiscite on the recall of the parliament is the last tool of a top-down initiated mechanism of Latvian direct democracy. With regard to subject matter, it is a proactive referendum, but it causes neither an amendment of a law nor does it create or veto a legal norm. Its outcome has rather a wide political consequence for authorities of the state, namely for either the parliament or the president himself. According to article 48 CLv, the president is enabled to 'propose the dissolution of the Saeima. Following this proposal a national referendum [not earlier than one month before and not later than two months after presidents notification] shall be held<sup>138</sup>. If in the referendum [independently of the number of participants] more than half of the votes are cast in favour of dissolution, the Saeima shall be considered dissolved, new elections called, and such elections held no later than two months after the date of the dissolution of the Saeima'. It should be noted that the recall is asked and triggered by the same actor, which means that the referendum is fully controlled by the president. But, at least it takes place on a single issue, such as the dissolution of the parliament. It could otherwise lead to an abuse of power.

Although the president is the single actor with full control of competencies over the referendum regarding the dissolution of the parliament, and who could, thus, reduce the number of other political actors who might veto the outcome<sup>139</sup>, there is a specific formal restriction existing that would still forestall the president's attempt to launch the dissolution of the parliament. This becomes much clearer if we consider article 50 CLv, which stipulates that 'if in the referendum more than half of the votes are cast against the dissolution of the Saeima, then the President shall be deemed to be removed from office, and the Saeima shall elect a new President to serve for the remaining term of office of the President so removed'. Due to the uncertainty about the outcome of a plebiscite on recalling

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137 Art. 10, par. 1 LoNRLIaECI.

138 see also Art. 5, par 1 and par 2 LoNRLIaECI.

139 see HUG/TSEBELIS, p. 466 f.

the parliament, it is to be assumed that the president will hesitate to avail himself of this institution. Until 2011 not a single president had used his or her right to recall the Saeima. However, on 28 May 2011, for the first time in Latvian history, the former president VALDIS ZATLERS, before his term had ended, acted according to the constitutionally given right and called for the dissolution of the Saeima (see Chapter IV-B-9).

#### 4.1.3 Citizen-Initiated referendums

In Latvia there is a major difference to Estonian direct democracy, namely the right of the Latvian people to initiate legislation from bottom up<sup>140</sup>. Indeed, bottom-up mechanisms existed already from 1923 to 1934. It took more than fifty years until it was re-established at the end of the communist period in 1989. Thanks to the citizens' initiative, which is a proactive direct democratic instrument, the people not only become an additional veto player in the decision-making process, but also an innovative actor to change the public policy by proposing a law or an amendment to the constitution<sup>141</sup>. In addition to the citizens' initiatives that create laws, there is also the popular initiative to recall the parliament<sup>142</sup>.

In the theoretical part of this paper (Chapter II-B-1-c) it was stated that the 'citizens' facultative referendum' to veto laws would be the second instrument of citizen-initiated direct democratic mechanisms. Indeed, as shown under 'Chapter IV-A-2, Referendums from above', in Latvia, such a reactive instrument (semi-plebiscite on repealing a law) exists. However, due to its specific triggering feature, this direct democratic mechanism bases on a joint action of both public authorities and the citizens (multiple actors), wherein the latter cannot start collecting signatures unless the authorities have requested the suspension of the law ante. For this reason, I assigned this veto instrument rather to the top-down mechanisms of direct democracy. Therefore, the Latvian direct democracy from below is only partially completed.

A total of two different citizens' initiatives – citizens' constitutional initiative and citizens' legislative initiative – to alter the state's legal settings and one initiative right to recall the parliament are available to the Latvians. Indeed, in all three cases the citizens are in complete control of the referendum, both with regard to framing the proposal (e.g. adoption, alteration or repeal of a law / recall of parliament) and triggering the relevant referendum. Nevertheless, there are still numerous constraints preventing Latvians from exercising their sovereignty to the full. Due to some formal procedural rules, such as quorums and collection provisions, their ability to control the vote is restricted. But, also due to the fact that citizens' initiatives cannot be framed (asked) on matters of policy, as stated in article 73 CLv. These policy issues are excluded from the initiative process<sup>143</sup>.

140 Art. 64 CLv and Art. 22 LoNRLIaECI.

141 see also Art. 1, par. 4, Art. 11, par. 1 LoNRLIaECI.

142 Art. 14 CLv; Art. 1, par. 7 and Art. 11, par. 5 LoNRLIaECI.

143 Art. 73 CLv; see also AUERS DAUNIS, *An Electoral Tactic? Citizens' Initiatives in Post-Soviet Latvia*, in: SETĀLĀ MAIJA/SCHILLER THEO (eds.), *Citizens' Initiatives in Europe. Procedures and Consequences of Agenda-Setting by Citizens* (Basingstoke 2012), p. 56 (cit. AUERS).



With regard to the citizens' initiatives on creating a legal norm, the law states that only a fully elaborated draft law or a draft amendment to the constitution can be subject to a popular vote<sup>144</sup>. This means that general suggestions cannot be issued for referendums. It should be noted that all popular initiatives are legally binding and proceed – with the exception of the turnout-approval quorum and temporal conditions – according to the same rules and procedures.

Regarding the legality and constitutionality of a citizens' initiative, there is nothing explicit in the constitution defining which authority would have the competency to check the extent to which an initiative is in accordance with the constitution of Latvia. The missing legal basis might result from the lack of practical experience. According to DAUNIS AUERS, however, in practice any challenge would go to a decision by the Constitutional Court<sup>145</sup>.

#### **4.1.3.1 The citizens' constitutional initiative**

According to article 78 CLv, 'electors, in numbers comprising not less than one tenth of the electorate, have the right to submit a fully elaborated draft of an amendment to the Constitution [or of a law] to the President, who shall present it to the Saeima'<sup>146</sup>. The Saeima is obliged to consider the constitutional amendment, and if the parliament does not adopt it without change to its content, the original proposal shall then be submitted to a national referendum<sup>147</sup>. In other words, the parliament either adopts the citizens' initiative without any change to its content or there is a referendum on the original proposal, to be held if the parliament rejects the citizens' draft or adopts it with changes. For an approval, at least half of the whole electoral votes in favour are needed<sup>148</sup>. As for mandatory constitutional referendums, formally, there is no turnout quorum requested to validate the ballot. But, factually, at least 50 percent of all eligible citizens who are at the same time in favour of the citizens' initiative have to participate should the proposal be adopted<sup>149</sup>.

#### **4.1.3.2 The citizens' legislative initiative**

In addition to the constitutional initiative, Latvians can also trigger legislative initiatives. Pursuant to article 78, one tenth of the electors have the right to submit their formulated draft to the president, who then forwards it for parliament's consideration. Identical provision is also contained under article 65 of the constitution, 'Draft laws may be submitted to the Saeima by the President, the Cabinet or committees of the Saeima by not less than five members of the Saeima or, in accordance with the procedures and in the cases provided for in [the] Constitution, by one-tenth of the electorate'<sup>150</sup>. Similar to the citizens' constitutional initiatives, the referendum on the relevant draft law takes place only if the parliament rejects the citizens' draft law or approves it with changes to its content<sup>151</sup>. But, unlike with constitutional initiatives, a draft law shall be deemed adopted if 'the number of voters is at least half of the number of electors

144 Art. 22 LoNRLIaECI.

145 AUERS, p. 56.

146 see also Art. 1, par. 4 LoNRLIaECI.

147 Art. 78 CLv; Art. 11, par. 1; Art. 25, par. 2 LoNRLIaECI.

148 Art. 79, sec. 1 CLv.

149 see also UŠACKA, p. 96.

150 see also Art. 78 CLv.

151 Art. 1, par. 4 and Art. 11, par. 1 LoNRLIaECI.

as participated in the previous parliamentary election and if the majority has voted in favour of [it]<sup>152</sup>.

#### 4.1.3.2.1.1 *A two-stage signature collection*

Up to now it has been stated that not less than one-tenth of the electorate is needed to submit a formulated draft law or a fully elaborated draft amendment to the constitution to the president, who then presents it to the parliament for its consideration<sup>153</sup>. Here, the matter was the triggering of the popular vote. It has not explicitly been stated who formulates the question (asking) and how the framing of the elaborated draft is to proceed.

It should be noted that Latvian citizen-initiated direct democracy to change the status quo bases on a double stage signatures collecting process. Submitting a popular draft to the president by at least one tenth of the electorate is, in fact, the second stage of triggering a referendum. Before the second stage can be achieved, the formulated draft at first has to be submitted over a course of twelve months by not less than 10,000 eligible citizens to the Central Election Commission (CECLv)<sup>154</sup>. Until recently the law did not mention who precisely forms the group of the citizens' initiative for framing the issue. Nor did it say if there is a preliminary examination of the proponent's proposal as to its content. After the last amendment of LoNRLIaECI on 8 November 2012, the law has finally clarified the rules of application for popular initiatives. According to a new article, an initiative group can either be a political party, an association of political parties or an association of at least 10 electors<sup>155</sup>. Such a group is entitled to submit its application and the draft law or draft amendments to the constitution for which it plans to collect signatures of the electors<sup>156</sup>.

The CECLv is responsible for the registration of the elaborated draft in question<sup>157</sup>. The commission can refuse the application of the proponents' draft if the initiative group does not comply with the requirements for being an initiative group or if the draft is still incomplete as to form or content<sup>158</sup>: form, in the sense of a general suggestion instead of a fully elaborated draft, and content, in that no initiative is drafted on issues as stated in article 73 CLv<sup>159</sup>. It is rather a formal examination that CECLv carries out within this preliminary test. It does not do any legality checks of the initiative. In the case of a refusal of the application, the initiative group can appeal CECLv's decision to the Administrative Cases Department of the Supreme Court Senate, which examines the case as a court of first instance<sup>160</sup>. The court's decision upon examining the application is final and cannot be subject to appeal<sup>161</sup>. If the application conforms to the legal requirements, then the first stage of signature collection in support of the initiated draft can begin. All 10,000 collected signatures must be certified by a notary public or a local government authority before being submitted to the

152 Art. 79, sec. 2 CLv.

153 Art. 78 CLv; Art. 25, par. 1 LoNRLIaECI.

154 Art. 22 LoNRLIaECI.

155 Art. 23, par. 2 sec. 1 and 2 LoNRLIaECI.

156 Art. 23, par. 3 LoNRLIaECI.

157 Art. 23, par. 4 LoNRLIaECI.

158 Art. 23, par. 4, sec. 3 and par. 5, sec. 1 and 2 LoNRLIaECI.

159 see AUERS, p. 56.

160 Art. 23<sup>1</sup>, par. 1 and 2 LoNRLIaECI.

161 Art. 23<sup>1</sup>, par. 6 LoNRLIaECI.

CECLv<sup>162</sup>. The second stage, namely the official collection of signatures of one-tenth of the electorate, can only start if the initiative group has been able to collect 10,000 valid signatures in favour of its proposal at the initial stage. The second collection period is limited to 30 days, as article 7, par. 1 LoNRLIaECI prescribes. During this time the signature sheets for voters to sign shall be available at the places designated by city or municipality councils<sup>163</sup>. To gather signatures of one-tenth of the electorate each city and municipality must set up a collection station (at least one per 10,000 citizens)<sup>164</sup>. Also voters abroad can sign the signature sheets that are placed in the embassies or other diplomatic or consular missions of Latvia<sup>165</sup>. Signatures of 10,000 citizens who have signed the submitted formulated draft at the first stage shall be included in the total number of supporters who have participated in the second stage<sup>166</sup>. After the expiration of 30 days the CECLv counts the signatures and records the results. And within three days the commission notifies the president about the results<sup>167</sup>. 'If the draft law or the draft amendment to the constitution has been signed by not less than one-tenth of Latvian citizens who were eligible to vote in the previous Saeima elections, the President of Latvia shall submit to the Saeima the draft law or the draft amendment to the Constitution'<sup>168</sup>. The parliament has to consider the draft in question during the session in which the draft was submitted<sup>169</sup>.

With regard to the first signature collection stage, DAUNIS AUERS states that collecting 10,000 signatures within 12 months would be quite a modest figure<sup>170</sup>. However, it should be noted that this is a large number of citizens, considering that this is needed just for activating an initiative process formally, and an additional 30 days for signatures from one-tenth of the electorate in the second collection stage is far from modest. Nevertheless, at this stage a large part of the logistical burden of collecting signatures is borne by the state, in that it prescribes that there must be at least one signing station per 10,000 voters<sup>171</sup>. Still, it remains ambiguous because, on the one hand, it is beneficial for the proponents of an initiative to save financial and personnel resources. On the other hand, they are not free to collect signatures for their request at just any public place. It has to be done at prescribed polling stations. Thus, proponents have to get people to turn up at these signing locations first. And this might not work so easily, especially if the level of political participation is low within a civil society and the initiative group does not have enough money to finance public campaigns.

Besides logistical and temporal constraints at the second stage, there is another important challenge, namely a financial one, at the first collection stage. According to article 22 LoNRLIaECI, 'each signature [at the first stage] must be certified by a sworn notary public or a local government authority'. For a

162 Art. 22 second sentence LoNRLIaECI.

163 Art. 7, par. 1 LoNRLIaECI.

164 Art. 7, par. 2 LoNRLIaECI.

165 Art. 7, par. 6 LoNRLIaECI.

166 Art. 24, par. 2 LoNRLIaECI.

167 Art. 24, par. 3 LoNRLIaECI.

168 See Art. 25, par. 1 LoNRLIaECI.

169 Art. 25, par. 2 LoNRLIaECI.

170 see AUERS, p. 56.

171 see Art. 7, par. 2 LoNRLIaECI.

signature the notary charges are around three Euros. To poor social segments or other minorities, this causes a considerable financial burden for either the citizen signing the initiative or for the committee of the initiative<sup>172</sup>.

#### *4.1.3.2.1.2 An indirect initiative procedure*

If an initiative group manages to overcome all these structural hurdles within the signature collection process, then the proposal – formulated draft law or the draft amendment to the constitution – is in the hands of public authorities. Therefore, it should be noted that submitting a popular draft to the president, who then forwards it to the parliament and parliament's consideration of the proposal, is a central characteristic of an indirect initiative procedure.

In such a process the parliament generally gets the possibility to deliberate on the citizens' draft before submitting it to the popular vote. The parliament is free to give its approval to the citizens' proposal. It can further propose a counter-proposal as an alternative to the proposal framed by the citizens and submit it to a referendum at the same time as the initiative. Or a counter-proposal may also lead the proponents of the popular initiative to withdraw their draft in favour of the parliamentary alternative draft.

In the Latvian case, an option of a counter-proposal or of a withdrawal clause is mentioned neither in the constitution nor in the LoNRLIaECI. The parliament can rather adopt, reject or even revise and adopt the corresponding draft formulated by the citizens<sup>173</sup>. In case of a rejection or revision, the citizens' original proposal must be submitted to a popular vote, namely not earlier than one month before and not later than two months after parliament's decision<sup>174</sup>. It should be noted that a legislative gap can arise should the parliament adopt a citizens' draft with changes in its content and a popular draft be approved in the referendum at the same time. Neither the constitution nor the LoNRLIaECI contain a specific rule to determine which proposal comes into force as law. One can assume it is rather the referendum that will come into force.

Whether a citizens' initiative has been approved directly or not, it has to be taken into account that its formal efficacy can vary. No legal success is achieved if an initiative has been rejected both by the parliament and by the voters in the referendum. By contrast, partial success is achieved by the proponents of the initiative if their proposal has been rejected by the referendum but is nevertheless adopted, with changes to its original content, by the parliament. In this respect the referendum never corresponds to its original content as its proponents suggested or initially intended, but at least it partially succeeds. And finally, a complete success is given if the corresponding draft on an amendment to the law or to the constitution has been adopted without any changes to its content by parliament, or if the citizens' draft was rejected by the parliament but, nevertheless, accepted in the popular vote.

#### **4.1.3.3 The citizens' initiative on recalling parliament**

The citizens' initiative on recalling parliament is the third citizen-initiated direct democratic institution in Latvia. However, instead of creating a legislative norm,

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172 see AUERS, p. 56 f.

173 Art. 1, par. 4 and Art. 11, par. 1 LoNRLIaECI.

174 Art. 11, par. 2 LoNRLIaECI.

it rather aims to remove the whole parliament from office if one-tenth of the electorate proposes the dissolution of the parliament<sup>175</sup>. There is no right given to the citizens to recall an individual member of the parliament, as the second section of article 14 CLv states. Until 2009 a referendum on recalling the parliament could be asked and triggered solely from top down by the president<sup>176</sup>, as outlined above (see Chapter IV-A-2-c). Since 2009 also Latvian people have the right to initiate the dissolution of the parliament and call for new elections. Within this procedure the citizenry is the sole actor in full control of the referendum.

According to JĀNIS IKSTENS, in 2009 the free fall of the Latvian economy continued and, within the European Union, Latvia was to suffer most from the global recession. The disaffection of Latvians over the Saeima's politics caused strong and some violent protests, not seen in Latvia within the two last decades. Consequently, former state president VALDIS ZATLERS, 'in an extraordinary move, formulated an ultimatum to parliament and the government requiring a number of institutional changes: giving citizens a direct right to vote on the calling of extraordinary parliamentary elections; limiting the number of electoral districts in which a person can run for Parliament; setting up a council supervising the use of the international rescue loan; immediately drafting a plan of reorganisation of the system of public administrations; recruiting able ministers or broadening the coalition; and choosing the new head of the Anti-corruption Bureau'. Although the Saeima did not comply with the presidential ultimatum in full, under such heavy pressure from the public and the president, in 2009 it decided to fulfil a part of those presidential proposals. The parliament amended the parliamentary election law to allow each eligible citizen to run for the Saeima in only one of five electoral districts, as desired. Further it revised the constitution to enable a direct popular vote on the calling of extraordinary parliamentary elections from bottom up (see also Chapter IV-B-7)<sup>177</sup>.

According to the new wording of the article 14 of the constitution, the first section now establishes that 'Not less than one tenth of electors have the right to initiate a national referendum regarding a recall of the Saeima'. Rules for gathering signatures in favour of parliament's dissolution are in accordance with the procedures set out for citizens' initiative as described above. Also here a double-stage collection process is required. A deviation from described procedural rules arises for temporal and threshold hurdles. First, the right to initiate a recall of the parliament cannot be exercised within one year after the convening of the Saeima and one year before the end of the term of office of the parliament, during the last six months of the term of office of the President, as well as earlier than six months after the previous national referendum regarding the recall of the Saeima. And second, the parliament can be deemed recalled if the majority of voters and at least two thirds of the number of the voters who participated in the last parliamentary elections vote in favour thereof<sup>178</sup>.

Despite these restrictions, it has to be taken into account that today Latvia is the first EU country, in which a popular recall instrument to dissolve the parliament

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175 Art. 14, sec. 1 CLv; Art. 1, par 7 and Art. 11, par. 5 LoNRLIaECI.

176 see, Art. 48 CLv.

177 IKSTENS JĀNIS, Latvia, European Journal of Political Research 49/2010, p. 1054 f.

178 Art. 14 CLv.

exists. How practicable this new direct democratic tool will be has yet to be seen. Until now it has not been implemented, but this might change if the Saeima and government fail to tackle the country's problems and crisis.

To sum up, according to article 1 of LoNRLIaECI, in Latvia 'a national referendum shall be held if: 1) the Saeima has amended the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution [mandatory constitutional referendum]; 2) the President of Latvia has proposed the dissolution of the Saeima [presidential plebiscite on recalling parliament]; 3) the President of Latvia has suspended the proclamation of a law for two months, and during this period a petition by not fewer than one-tenth of the electorate has been received to put the suspended law to a national referendum [semi-plebiscite on repealing a law]; 4) the Saeima has not adopted without changes as to its content a draft law or a draft amendment to the Constitution submitted by not less than one-tenth of the electorate [Citizens' constitutional and legislative initiative]; 5) membership of Latvia in the European Union must be decided [mandatory referendum on EU-Accession]; 6) substantial changes in the terms regarding the membership of Latvia in the European Union must be decided, and at least one-half of the members of the Saeima have requested a national referendum on this matter' [parliamentary plebiscite for changes in EU-Membership].




After the amendment of the constitution in 2009, in which the parliament had decided to grant citizens the right to propose the dissolution of the parliament, a seventh paragraph was added to the LoNRLIaECI in November 2012. Therefore, a popular initiated national referendum [Citizens' initiative on recalling parliament] shall be held as well if 'at least one tenth of the electorate has proposed the dissolution of the Saeima'<sup>179</sup>.

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179 Art. 1, par. 1-7 LoNRLIaECI.



Table 2: Direct Democratic Institutions and their Use in Latvia (1991–2012)

MECHANISM OF DIRECT DEMOCRACY	NAME OF DD INSTITUTION	SUBJECT MATTER	SUBMITTED DUE TO	CHARACTER	INTENTION	POL. ACTOR / VETO-PLAYER <sup>1</sup>		FORMAL RESTRICTIONS FOR						USE
						ASKING (FRAMING)	TRIGGERING	TURNOUT	APPROVAL	SIGNATURES	COLLECTION TIME	COLLECTION PLACE	RANGE OF ISSUES	q / a / ai <sup>2</sup>
 REQUIRED	Mandatory constitutional referendum	to alter articles 1, 2, 3, 4, 6 and 77 of the constitution	law	binding	proactive	parliament (citizens)	automatic	formally no, factually yes <sup>3</sup>	>50% of total electorate	–	–	–	yes, referred issues	0 / 0 / 0
	Mandatory Referendum on EU-Accession	to join or leave the EU	law	binding	proactive	parliament / EU (citizens)	automatic	>1/2 of electors who participated in previous parl. Elections	>50% of the participants acc. to turnout restriction	–	–	–	yes only EU accession	1 / 1 / 0
 TOP-DOWN	Parliamentary plebiscite for changes in EU-Membership	for substantial changes regarding EU-Membership	parliament	binding	proactive or reactive	parliament / EU	>1/2 of the parliament	>1/2 of electors who participated in previous parl. Elections	>50% of the participants acc. to turnout restriction	–	–	–	EU members. related provisions	1 <sup>10</sup> / 1 / 0
	Semi-plebiscite on repealing a law	to veto (refuse or repeal) a law	president or parliament and citizens	binding	reactive	parliament	president or >1/3 of the parliament <sup>4</sup> and >10% of total electorate <sup>4</sup>	>1/2 of electors who participated in previous parl. Elections	>50% of the participants acc. to turnout restriction	>10% of electorate	1 month	designated collection stations	yes <sup>6</sup>	4 / 0 / 3
	Presidential plebiscite on recalling parliament	to recall (dissolve) the parliament and to set new parl. elections	president	binding	proactive	president	president	no	>50% of participants <sup>5</sup>	–	–	–	only to recall the parliament	1 / 1 / 0
 BOTTOM-UP	Citizens' constitutional initiative <sup>7</sup>	to initiate a formulated draft to amend the constitution	citizens	binding	proactive	political party, association of pol. parties or >10 electors	1st stage: >10'000 citizens (0.65%) 2nd stage: >10% of total electorate	formally no, factually yes <sup>3</sup>	>50% of total electorate	1st stage: 10'000 = >0.65% 2nd stage: >10% of total electorate	1st stage: 12 months 2nd stage: 1 month	designated collection stations	yes <sup>8</sup>	2 / 0 / 1
	Citizens' legislative initiative <sup>7</sup>	to initiate a formulated draft to amend a law	citizens	binding	proactive	political party, association of pol. parties or >10 electors	1st stage: >10'000 citizens (0.65%) 2nd stage: >10% of total electorate	>1/2 of electors who participated in previous parl. elections	>50% of the participants acc. to turnout restriction	1st stage: 10'000 = >0.65% 2nd stage: >10% of total electorate	1st stage: 12 months 2nd stage: 1 month	designated collection stations	yes <sup>8</sup>	1 / 0 / 1
	Citizens' initiative on recalling parliament	to dissolve or recall the parliament and set new elections	citizens	binding	proactive	political party, association of pol. parties or >10 electors <sup>9</sup>	1st stage: >10'000 citizens (0.65%) 2nd stage: >10% of total electorate	no	>2/3 of electors who participated in previous parl. elections	1st stage: >0.65% 2nd stage: >10% of total electorate	1st stage: 12 months 2nd stage: 1 month	designated collection stations	only to recall the parliament	0 / 0 / 0
Total Votes														10 / 3 / 5

### Remarks

- 1: The possibility of a referendum introduces the citizens as one additional veto player into public legislative process. A veto player is an individual or collective actor whose agreement is needed for a change in the legislative status quo. If an existing or latent veto player controls **both** the framing of the proposal and the triggering of the referendum, other veto players lose their ability to veto outcomes, the number of veto players decreases and potential of policy change increases (HUG/TSEBELIS, 2002)
- 2:  $q / a / ai$  = quantity of referendums / approved / approved but invalid due to precise formal restrictions
- 3: Depending on the approval quorum, it can range from 50 percent to 100 percent
- 4: The Latvian single chamber parliament is composed of 100 members (Art. 5 CLv) and there are around 1,545,000 eligible citizens (2012)
- 5: If 50% of votes are cast against the dissolution of the parliament, then the president shall be deemed removed from office
- 6: Issues according to Art. 73 CLv and also urgent laws (Art. 75 CLv) and no referendum shall be held if there is a second reading and a majority of 3/4 of all parliament's members votes for the adoption of the law (Art. 72 CLv)
- 7: It is an indirect initiative procedure. A referendum on the citizens' initiative only happens if the parliament rejects or adopts a citizens' proposal with changes to its content.
- 8: Policy areas according to Art. 73 CLv are excluded from the popular initiative process
- 9: There are some time restrictions wherein the right to recall the parliament cannot be exercised (Art. 14 CLv)
- 10: This popular vote refers to referendum on independence on 3 March 1991. Indeed, at that time it was framed and triggered by the parliament. In the recent constitution a similar top-down direct democratic provision is only possible for issues related to the EU.

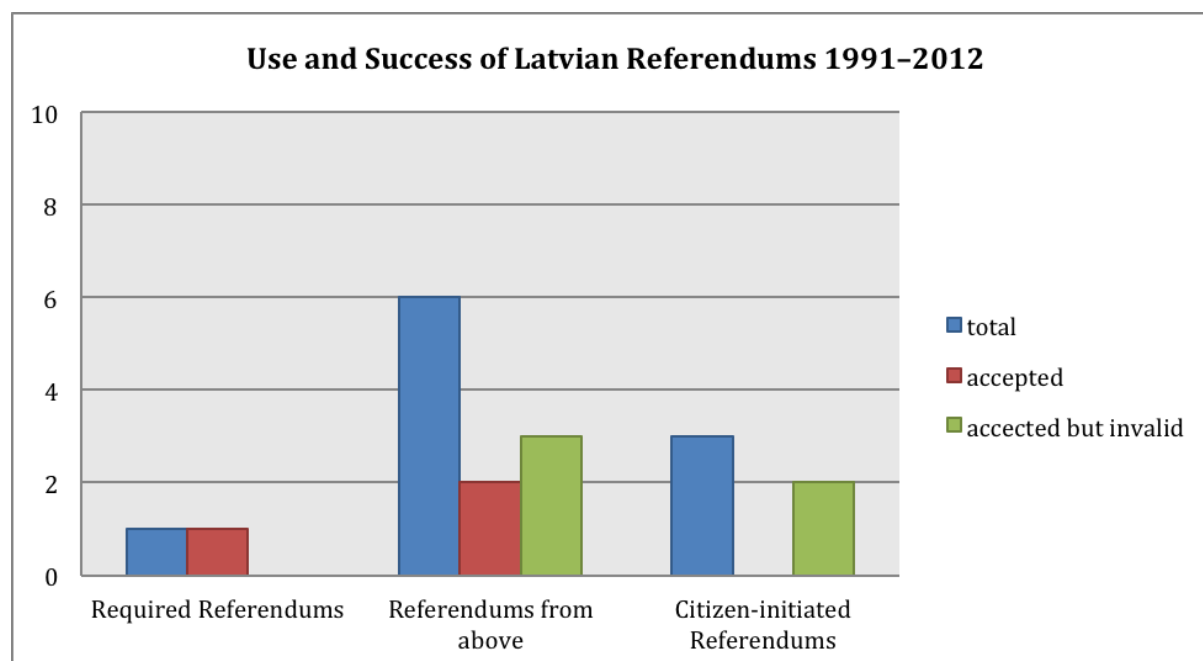


## 4.2 Latvian direct democracy in practice

Since re-independence from Soviet occupation, ten national referendums<sup>180</sup> have been held in Latvia (see *Table 2*), whereof the last one took place on 18 February 2012<sup>181</sup>. Only three of these have been adopted and seven referendums failed the vote. The failure of the seven referendums does not mean that they were rejected by the people. On the contrary, five of these were clearly accepted by the voters who had participated in the ballot. But, due to the missed turnout quorum that is required formally (or factually), the ballot result had to be declared invalid. An invalidation of an approved referendum is often a result of the opponents' tactical call to their supporters to not participate in a corresponding popular vote.

As shown, eight different direct democratic tools divided into three direct democratic mechanisms exist in Latvia. But, until recent times, not every tool has been used with the same frequency (see *Figure 2*).

**Figure 2:**



Top-down referendums are the leading mechanism of Latvian direct democracy. Six referendums were triggered by the authorities or by joint action with the people. The first referendum from above (referendum on independence) was triggered by the parliament. In four other cases they resulted from a joint action of the authorities and the citizens to veto a law that the majority of the parliament had drafted (4 semi-plebiscites on repealing a law). The sixth plebiscite was brought forward by the president (presidential plebiscite on

180 Including the referendum on re-independence that has been approved on 3 March 1991.

181 see database c2d, [http://www.c2d.ch/votes.php?level=1&country=196&year=timeperiods&fromyear=1992&toyear=2012&speyear\[\]=2013&result=0&terms=&table=votes&sub=Submit\\_Query](http://www.c2d.ch/votes.php?level=1&country=196&year=timeperiods&fromyear=1992&toyear=2012&speyear[]=2013&result=0&terms=&table=votes&sub=Submit_Query) (accessed on 03.12.2012).

recalling parliament). Within two decades only one required referendum (mandatory constitutional referendum) and three popular votes, which had been initiated by the citizens from below (2 citizens' constitutional initiatives, 1 citizens' legislative initiative), were carried out. The low amount of citizen-initiated referendums does not automatically imply a low popular interest in bottom-up legislative procedures. Due to indirect initiative procedures, some popular drafts have been adopted without any changes to the content by the parliament itself and, thus, succeeded completely as well (see Chapters IV-B-11 and IV-B-12).

With regard to their political content, these ten referendums can be distributed to different policy areas as follows: The main political issue which has been dealt with concerns the state organisation as national identity, legal and political systems as well as fundamental rights. There were five referendums on this topic. Two other referendums concerned social policy; specifically, the social security system. In two other cases Latvian citizens had to come to a decision on security issues, namely on public security. And in one case the referendum referred to foreign policy, namely the accession to the EU<sup>182</sup>. The popular proposal that has been adopted by the parliament directly dealt with energy questions.

#### **4.2.1 The referendum of 3 March 1991 on Latvia's independence**

By proposing a union referendum, Gorbachev had opened a floodgate for an independence referendum in Latvia. It was a parliamentary plebiscite framed and triggered by the Latvian Supreme, but according to Soviet law<sup>183</sup>. Around 88 percent of eligible Latvians went to the polls and 74 percent of them voted in favour of independence. Calculated on the basis of all eligible voters this makes 65 percent<sup>184</sup>. Indeed, like in Estonia, this amount was not enough to exceed the two-thirds of all eligible voters that the Soviet law on secession required. Nevertheless, that did not worry the Baltics, since they rejected Soviet law anyway<sup>185</sup>.

The referendum on Latvia's independence does indeed not fit perfectly with the recent conceptualisation of direct democratic mechanisms in Latvia since there are no further parliamentary plebiscites that deal with issues of utmost national importance.

As in Lithuania and Estonia, the declaration of the Supreme Soviet of the Latvian Soviet Socialist Republic (SSR) on the Renewal of the Independence of the Republic of Latvia foresaw the adoption of a new constitution. However, conditioned by a historical continuity discourse, the pre-communist constitution was simply reintroduced on 6 July 1993 without holding a referendum. The Latvian constitutional structure is similar to that of Estonia, namely a parliamentary system with constitutional authority over the president, who has

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182 Results on <http://www.c2d.ch/votes.php?table=votes> (accessed on 30.06.2012).

183 BRADY/KAPLAN, p. 192 f.; Loser Gorbachev, *The Economist* [London, England], 9 March 1991, p. 16.

184 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=39084](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=39084) (accessed on 10 July 2012).

185 The Referendum Scorecard, *The Economist* [London, England], 23 March 1991, p. 62.

more of a ceremonial role<sup>186</sup>. However, in contrast to Estonia and Lithuania, the Latvian president is entitled to dissolve the parliament, if necessary, by a presidential plebiscite.

#### **4.2.2 The referendum of 3 October 1998 on the repeal of the facilitated naturalisation amendment**

Six years after the restoration of independence the first official referendum that was submitted to popular vote concerned the liberalisation of the regulations on naturalisation. The parliamentary reform aimed to facilitate citizenship for stateless children born after independence and to abolish the limitation of naturalisation per year (framing the question). To one part, the relevant new law was also passed due to pressure of the Organisation for Security and Cooperation in Europe (OSCE). But, due to the Fatherland Party's opposition, the reformed law had to be taken to a referendum to be finally binding<sup>187</sup>. As stated in article 72 CLv, the proclamation of a law adopted by the parliament can be suspended for a period of two months if there is such a request by the president or by one-third (100/3) of the members of the parliament. The Fatherland Party, holding 38 seats, availed itself of this article and with the effect that within the given time frame an amount of one-tenth of signatures of all eligible citizens was gathered in order to submit the issue to a national referendum (semi-plebiscite on repealing a law based on a joint action). For the referendum, which had been held on the same day as the parliamentary elections, a participation quorum of at least 50 percent of the electors who participated in the previous Saeima elections was necessary<sup>188</sup>. As the ballot took place on the same day as the parliamentary elections, the obstructive tactic towards referendum supporters was prevented and the turnout was 19 percent over the formally requested quorum. Nevertheless, the repealed issue put to a popular vote did not get enough support by the participants. Only 46 percent of the Latvian citizens voted in favour of the referendum to abolish facilitated naturalisation<sup>189</sup>. Thus, due to this negative outcome the reformed naturalisation law could not be repealed as the Fatherland Party had intended. In contrast, we can argue that the majority of the Latvians voted in the same sense as the rest of the parliament, which reformed the law to facilitate naturalisation.

#### **4.2.3 The referendum of 13 November 1999 on the repeal of the pension system reform amendment**

On 5 August 1999, the parliament approved a new pension law whose scope was to increase the retirement age for both men and women to 62 and to modify wage regulations for working pensioners (asking the question). The latter aimed to break off the payment of pensions to persons who continued to work after retirement age<sup>190</sup>. Once more, in accordance with article 72 of CLv, three parties

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186 MOLE, p. 97.

187 See c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=39221](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=39221) (accessed on 13.07.2012); UŠACKA, p. 106 f.

188 see Art. 74 CLv.

189 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=39221](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=39221) (accessed on 13.07.2012).

190 UŠACKA, p. 101 ff.

from the opposition acted to suspend the promulgation of the amendments on the retirement law for two months. During the given collection period of 30 days signatures of almost 14 percent of the electorate were collected (joint action on triggering the referendum) and the referendum (semi-plebiscite on repealing a law based on a joint action) was held on 13 November 1999. In spite of yes-votes of almost 95 percent, the referendum failed since the necessary participation threshold of 50 percent of the voters who participated in the previous parliamentary elections had not been reached<sup>191</sup>. Hence, the amendments to the law on the pension system were not repealed and the new law, as requested by the majority of parliament, entered into force.

#### **4.2.4 The referendum of 21 September 2003 on the accession to the European Union**

The only mandatory referendum that has been held in Latvia is related to European Integration. For Latvia the referendum on joining the EU held on 21 September 2003 was at the same time the single most important political event in that year<sup>192</sup>. As mentioned above, the Latvian constitution had not contained any authorisation for referendums on such issues before. After the necessitated supplementation of articles 68 and 79 of the Satversme, a formally accurate procedure in the sense of automatic triggering had been opened for holding a referendum on EU accession. On the ballot, the required turnout of at least 50 percent of the electors voting at the last elections to the parliament was cast by around 73 percent. And Latvian electors voted by not less than 67 percent in favour of the accession to the European Union<sup>193</sup>.

#### **4.2.5 The referendum of 7 July 2007 on the repeal of amendments to the law on state security services**

The law on State Security Services and State Security Authorities (see Chapter IV-B-6), which had been enacted based on the emergency clause of the constitution<sup>194</sup> by the governing parties, aimed at enabling the government to access data of the intelligence services office, the security police and the military secret service (asking the question). However, the former Latvian President VĀIRA VĪKE-FREIBERGA voiced clear resistance to the amendments and submitted her veto according to Article 72 of the constitution. Hence, the promulgation of the law was suspended for a period of two months. VĪKE-FREIBERGA did not want to give political actors extensive access to secret services and endanger Latvia's ties to NATO. Consequently, a popular referendum was launched (joint action on triggering the referendum).

The president's move put the coalition on the defensive. And as a consequence of this political pressure and to avoid a major public embarrassment, the two corresponding amendments were withdrawn by the parliament in March 2007.

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191 See, Art. 74 CLv; c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=39220](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=39220) (accessed on 13.07.2012).

192 IKSTENS JANIS, Latvia, European Journal of Political Research 43/2004, p. 1056.

193 see c2d databae, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=39219](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=39219) (accessed on 14.07.2012).

194 Art. 81 CLv. On May 3, 2007 the emergency clause has been repealed by the parliament by a margin of 90 to 0 votes.

Nevertheless, the initiated procedure of the presidential popular veto could not be stopped anymore and the referendums still went ahead<sup>195</sup>. The necessary 10 percent of signatures to repeal the designed laws had been collected within given period of 30 days. And on 7th July the national ballot to repeal the amendments took place. The first referendum abolishing the amendment to the law on State Security Services had been accepted by 97 percent of the participants. But, the requested turnout of half the number of those who had participated in the previous national parliamentary elections could not be reached and, thus, the final result did not count<sup>196</sup>. Nevertheless, the availability of the semi-plebiscitary referendum had demonstrated its efficacy ante, namely by forcing the parliament to withdraw its two amendments.

#### **4.2.6 The referendum of 7 July 2007 on the repeal of amendments to the law on state security authorities**

The second referendum repealing the amendment to the Law on State Security Authorities also followed according the same circumstances as described above (Chapter IV-B-5). And it was accepted by 97 percent of the participants in the ballot, too. Indeed, also this popular vote to veto the amendment failed to receive the qualified turnout quorum. However, it did not fail to show its full effect by forcing the parliament to a withdrawal of its initial draft on this issue<sup>197</sup>.

#### **4.2.7 The referendum of 2 August 2008 on the dissolution of parliament by popular vote**

The first citizens' constitutional initiative submitted to referendum was asked by the Trade Union Confederation in November 2007. It was prompted by a growing dissatisfaction with the performance of the parliament, an overheating economy and a growing trade deficit. The initiative claimed the amendment of articles 78 and 79 of the Satversme, enabling citizens to directly demand the dissolution of the parliament and thus to call extraordinary elections to it. Until this time only the president was entitled to trigger a popular vote on recalling the parliament and to set preterm national elections, as contained in article 48 of the constitution<sup>198</sup>.

To launch the initiative on recalling the parliament by popular vote (triggering the referendum), initially not less than 10,000 signatures by eligible citizens were necessary. After gathering these signatures at a first collection stage, the initiative group submitted their corresponding formulated draft amendment to the constitution to the Central Election Commission<sup>199</sup>. After the CECLv had ascertained 11,095 valid signatures, the official collection of signatures (second stage) in support of the initiated draft began. The necessary number of 151,521 signatures (10 percent of the total electorate 2008) to submit the proposal to the

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195 IKSTENS JANIS, Latvia, European Journal of Political Research 47/2008, p. 1043; AUERS, p. 64.

196 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=57318](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=57318) (accessed on 14.07.2012).

197 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=57767](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=57767) (accessed on 14.07.2012).

198 IKSTENS JANIS, Latvia, European Journal of Political Research 48/2009, p. 1016 f.

199 see Art. 22 LoNRLlaECI.

Saeima for its mandatory consideration and eventual adoption was easily collected from March 12 to April 10. In total, there were 217,567 voters who had signed for the proposal. According to procedures as stated in articles 76 and 78 CLv, the president submitted the elaborated draft to the parliament<sup>200</sup>. For the initiated amendment to the constitution to be approved without any change as to its content by the Saeima, it had to be passed by a majority of not less than two-thirds of members of parliaments. However, the citizens' proposal failed to reach this margin with 44 to 37 votes and 17 abstentions. Consequently, a national referendum on this constitutional initiative was held on 2 August 2008. Around 97 percent of the 629,064 voters who participated in the ballot voted in favour of the proposal, but due to the low number of participants – 41.5 percent of the total 1,515,213 electors – the referendum missed the formally required approval quorum of 50 percent of the total electorate. Consequently, the adoption of the proposed constitutional amendment failed and the positive result had to be deemed void<sup>201</sup>.

This outcome was mainly caused by the political establishment's strong opposition. The majority of the parliament's parties called the citizens to boycott the vote in order to prevent the necessary threshold<sup>202</sup>. The proponents of the amendment, on the other side, complained about a rigging of the contest. In their view, setting the ballot date to the beginning of August undermined the required minimum of 50 percent threshold because many people were on holiday at that time<sup>203</sup>.

Surprisingly, only one year after the citizens' initiative on recalling the parliament by popular vote there was an important institutional change to this matter, namely the amendment of article 14 of the constitution. Due to the growing economic crisis in the country and the pressure from the population as well as from the former President VALDIS ZATLERS, the Latvian parliament found itself constrained to amend the constitution, giving the citizens the right to ask and trigger a national referendum regarding the recall of parliament. Although the referendum on the dissolution of the parliament by popular vote had failed to be effective initially, we can assume that it had still achieved its purpose, namely by both bringing the issue onto the political agenda and by putting public pressure on the parliament<sup>204</sup>.

#### **4.2.8 The referendum of 23 August 2008 on a limited increase of public pensions**

Already in the same month as the referendum on the dissolution of the parliament by popular vote, Latvian voters had to vote on a second bottom-up initiated referendum. It is the unique legislative initiative that has been submitted to a referendum. The proposal by the Pensioner's Party and other organisations on the increase of public pensions was successfully supported by 11,898 voters

200 see also Art. 25 LoNRLlaECI.

201 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=57768](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=57768) (accessed on 14.07.2012), IKSTENS, 2009, p. 1017 f.

202 AUERS, p. 64.

203 IKSTENS JANIS, European Journal of Political Research 48/2009, p. 1017.

204 see also explanations under Chapter IV-A-3-c 'The citizens' initiative on recalling parliament'.



(quorum 10,000) at the initial signature drive. The following collection of signatures of not less than one-tenth of the electorate in a second step could be successfully accomplished by 170,342 instead of the necessary 151,610 signatures as well. The proposed draft law to the parliament had been rejected with 6 to 44 votes and 46 abstentions. Therefore a national referendum on the proposed legislative initiative had to be held. Although the proposal had been supported by 96 percent of the participants, the law draft could not be adopted since the required turnout of at least 50 percent of the participants in the last parliamentary elections could not be reached<sup>205</sup>. Only 38 percent of the voters who voted in the 2006 parliamentary elections participated in the referendum on old-age pensions and, hence, the referendum was declared to have no legal binding force. This low turnout quorum was once again a result of a tactical campaign of non-participation, which was used by the opponents of the proposal, namely by government coalition parties and the liberal media<sup>206</sup>.

#### **4.2.9 The referendum of 23 July 2011 on the early dissolution of the Saeima**

On 28 May 2011, approximately one month before the former president VALDIS ZATLERS' term of four years was due to end, he called a referendum on recalling the parliament. This was the first dissolution referendum that a state president had triggered since a majority of parliamentary deputies had blocked a corruption inquest by the country's anti-corruption agency (KNAB) into one of the country's most notorious oligarchs and member of parliament, AINĀRS ŠLESERS<sup>207</sup>. According to president ZATLERS, the parliament had 'showed disrespect and mistrust of the competency of the judicial authorities'.

A few days after VALDIS ZATLERS's dissolution decision on 2 June 2011 there were presidential elections in the parliament and ANDRIS BĒRZIŅŠ instead of VALDIS ZATLERS was elected as the new president of Latvia. ZATLERS's defeat in the contest was greeted with dismay by some anti-corruption protestors and the previous president VAIRA VĪKE-FREIBERGA.

Two months after ZATLERS's dissolution decision, the presidential plebiscite on recalling the parliament was upheld, on 23 July 2011. Approximately 45 percent of 1.5 million registered voters participated in the ballot and an overwhelming majority of these voters, namely 95 percent, pursued ZATLERS's decision and voted in favour of dissolving the Saeima<sup>208</sup>. Consequently, as there is formally no turnout quorum required for presidential plebiscites on recalling the parliament<sup>209</sup>, the parliament was dissolved. And almost one year after the last

205 Art. 79 CLv and see comments and results on c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=57769](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=57769) (accessed on 14.07.2012); IKSTENS JANIS, Latvia, European Journal of Political Research 48/2009, p. 1018.

206 IKSTENS JANIS, Latvia, European Journal of Political Research 48/2009, p. 1018; AUERS, p. 61.

207 A Long Hot Summer, The Economist [online], <http://www.economist.com/blogs/easternapproaches/2011/06/latvian-politics/> (accessed on 15.07.2012).

208 Die Letten für baldige Wahlen, Neue Zürcher Zeitung, 25 July 2011, p. 2.

209 Art. 48 CLv.

Saeima elections, in October 2010, new elections to the parliament were set for 17 September 2011.

Although ZATLERS's request for the dissolution of the parliament led to the Saeima's retribution by refusing to grant him a second term, now it was the parliament that had been punished in turn. Latvian citizens did not accept parliament's refusal to deal with state corruption. It can be argued that direct democracy from above has helped the people to protest against the lacking transparency and to act as a corrective. Further, it was a tool to caution against corrupt developments in the establishment and to combat the power of the oligarchs. Thus, it should also be noted that this presidential plebiscite was not used to secure special legitimacy for the president's position, but much more to oblige the parliament to do its job correctly with respect to transparency.

Indeed ZATLERS had been ruled out for a second presidential term, but his political career had not finished yet. In contrast, a few days after he had left office he announced the foundation of his new politically middle-right party: the 'Zatlers's Reform Party'. And according to polls, his ZRP could expect enough support from the citizens on the extraordinary parliamentary election of 17 September 2011<sup>210</sup>. Indeed, his party straight away carried 22 of 100 seats in pre-term parliamentary elections and became the second largest political party in the Saeima after the winning party 'Harmony Centre' (31 mandates), which is mainly supported by a Russian-friendly electorate. Today 'Zatlers' Reform Party', the 'Unity' party of the Prime Minister VALDIS DOMBROVSKIS and the right nationalist 'National Alliance' form the Latvian government coalition, without the winner of the parliamentary elections<sup>211</sup>.

#### **4.2.10 The referendum of 18 February 2012 on Russian as the second official language**

Around 33 percent of the Latvians are ethnically Russian or Belarusian and about 38 percent of the population declare Russian as their native language. And there are also plenty of mixed marriages and bilinguals among the population. However, in Latvia the language is more than a statistical matter. It has more of a historical and political relevance for Latvians because during the Soviet occupation of over fifty years Latvian was systematically suppressed<sup>212</sup>. And as a result of this traumatic experience, after re-independence the Latvian constituency recognized only Latvian as the official language of the country<sup>213</sup>. In recent times some Latvian nationalists wanted to go much further and launched a citizens' constitutional initiative to amend article 112 of the constitution. The formulated draft claimed that Latvian should become the only official language at public schools, too. But, in May 2011, this initiative failed to collect one tenth of the electors' signatures required at the second collection stage<sup>214</sup>.

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210 Valdis Zatlers plant Comeback, *Neue Zürcher Zeitung*, 23 July 2011, p. 7.

211 see, Die Linksopposition siegreich in Lettland, *Neue Zürcher Zeitung*, 19 September 2011, p. 3; Dombrovskis bleibt im Amt, *Neue Zürcher Zeitung*, 12 October 2011, p. 7.

212 Latvia's Failed Referendum, *The Economist* [online], <http://www.economist.com/blogs/easternapproaches/2012/02/more-questions-please> (accessed on 20.11.2012).

213 Art. 4 CLv.

214 see Chapter IV-B-12.



As a counter reaction to this failed constitutional initiative, the association 'native language' (consisting of predominantly Russian-speaking Latvians) triggered their own constitutional initiative, intending to make Russian the second official language of Latvia. According to their formulated draft, articles 4, 18, 21, 101 and 104 of the constitution required alterations. In contrast to the nationalists' initiative, the proposal did not fail the second signature collection stage and succeeded, obtaining 187,378 signatures (10% quorum: 154,379) from the citizens in favour. To another part, the success of the second citizens' constitutional initiative that has been submitted to a popular vote stemmed from the 'Harmony Centre' electors' disappointment in the new government. As outlined under Chapter IV-B-9 above, after the pre-term parliamentary elections in September 2011, 'Harmony Centre' had been excluded from being part of the coalition despite the fact that it was the winner of the extraordinary elections. Officially, the 'Harmony Centre' itself did not support the initiative. However, this did not prevent its disillusioned supporters from signing the initiative 'Russian as second official language'<sup>215</sup>.

After the successful collection of one-tenth valid signatures, the proposed constitutional amendment was submitted to the President ANDRIS BĒRZIŅŠ to present it to the parliament<sup>216</sup>. During the session, the government parties rejected the proposal by a margin of 0 to 60 and they also attempted to have the provision declared unconstitutional. However, the Constitutional Court did not stop the ballot. Even if the parliament had given its approval, a popular vote would have been inevitable, since the formulated draft also included an alteration of article 4 of the constitution. And any amendment of article 4 requires an automatic referendum, as article 77 CLv states<sup>217</sup>.

On the ballot day the turnout was cast by 71.10 percent of the total electorate, which is a very high participation level indeed. To come into force, a constitutional initiative has to be approved by at least half of the electorate<sup>218</sup>. But, the popular initiative was clearly rejected by around 75 percent of the participants<sup>219</sup>. As in other referendums, the opposition of the initiative could have voided the referendum result by staying away from the ballot. Nevertheless, the mobilisation was very high and many Latvians have followed the former President VAIRA VĪKE-FREIBERGA's appeal to go to the polls and show the international community that the question of language does not matter exclusively to an ethnic minority, but to the whole population of the country.

Despite the high turnout and high rejection quota of 'Russian as second official language', the referendum still illustrates the existing ethnic division between the pro- and anti-Russian groups after the re-independence<sup>220</sup>. And it has pushed up the political agenda, and entrenched Latvian fears of assimilation and

215 «Es gibt kein stärkeres Mittel, um uns wütend zu machen», Neue Zürcher Zeitung, 18 February 2012, p. 7; Russisch wird nicht zweite Amtssprache in Lettland, Neue Zürcher Zeitung, 20 February 2012, p. 3.

216 Art. 25, par. 1 and 2 LoNRLIaECI.

217 see also Art. 1, par. 1 LoNRLIaECI.

218 Art. 79, sec. 1 CLv.

219 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=132497](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=132497) (accessed on 06.12.2012).

220 see AUERS, p. 62.

intimidation by the big eastern neighbour. Latvian citizens still fear that Russia and ethnic Russians in Latvia regard Latvian independence as a temporary situation<sup>221</sup>.

#### **4.2.11 Proposed and adopted initiatives without holding referendums**

In April 2000 trade unions mobilised over 12,000 Latvian citizens to submit a draft law to the Central Election Commission. The relevant amendment to the 'Law on Electric Power Industry' aimed at prohibiting the privatisation of Latvian electricity monopolist 'Latvenergo'. After the validation of these signatures, the second collection stage started. Within 30 days a total of 307,330 signatures of the electorate (23%) were collected, and the draft law was submitted to the parliament's consideration. Due to huge popular support, the Saeima did not dare to reject the popular proposal and adopted the proposed law without substantial changes to its content, preventing the need for a referendum. The popular initiative on the energy law succeeded fully and forced the government to backtrack on its proposal concerning the privatisation of the national electrical utility<sup>222</sup>.

#### **4.2.12 Initiatives without sufficient signatures**

Besides the implemented initiatives above, in Latvia there have also been other attempts to initiate some proposals of amendments to the constitution or of a law, but they all failed due to an insufficient number of signatures, as formally stipulated by article 78 of the Satversme. Some other referendum launches failed already in the beginning because the necessary amount of 10,000 signatures to present a draft to the CECLv could not be collected at the first collection stage.

In 1995 the Farmer's Union of Latvia for instance aimed to reform the constitution and formulated a new draft amendment to the Satversme which contained several proposals, such as direct election of the president, extension the parliament's term to four years, guaranteeing provisions for the dismissal of deputies or even a chapter devoted to local governments. In order to submit the draft to the CECLv, 10,000 signatures were necessary. However, it could not be reached.

Although the necessary amount failed to start the second stage of signature collection, in the following years the Latvian parliament adopted the mentioned amendments, except the direct election of the president by the Latvian citizens<sup>223</sup>. Hence, also here the popular initiative showed a long-term effect.

In 1995 another popular initiative had the aim of recalling single members of the parliament. Although over 10,000 notarised signatures were collected in favour of this proposal, this draft amendment to the constitution was never submitted to the CECLv. And in 1996, a citizens' legislative initiative to make citizenship law more stringent failed the second signature collection stage<sup>224</sup>.

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221 Latvia's failed Referendum, The Economist [online], <http://www.economist.com/blogs/easternapproaches/2012/02/more-questions-please> (accessed on 20.11.2012).

222 UŠACKA, p. 108; AUERS, p. 60.

223 UŠACKA, p. 100, p. 105.

224 FELDHUNE, p. 82.

Also, attempts after 2001, especially those by the Latvian Social Democrats to reform the constitution and provide for a popularly elected state president, failed to gather the necessary support of 10,000 voters to initiate a relevant referendum. And the second attempt at a popularly elected head of state in 2009 by 'All for Latvia!' also failed to achieve the threshold of 10,000 signatures<sup>225</sup>. Nevertheless, the later adoption of some other stated amendments by the Saeima shows that even if such referendum attempts fail to have a direct effect on the legislative process in the beginning, they boost the reform will in the legislation in the desired direction. In 2005, 'All for Latvia!' had also launched a citizens' initiative with the aim that all amendments on the law on naturalisation should be put to a referendum, however, it failed to collect 10,000 notarised signatures<sup>226</sup>.

In June 2011 the movement '13 January' tried to collect signatures for an initiative to elevate the status of Russian, to make it the second official language, but it failed already at the first collecting stage to gather 10,000 signatures<sup>227</sup>. However, as mentioned above (see Chapter IV-B-10), the second attempt by the association 'native language' to make Russian the second official language was more successful. Though successful in the first and second phase of the collecting process, it missed the absolute majority in the voting on February 2012. Another initiative from the political opposition, namely the nationalist parties (National Alliance), in contrast, aimed at making Latvian the sole language at public schools. As already outlined, it failed to gather sufficient signatures (10% of electorate) at the second collecting stage in May 2011<sup>228</sup>. Once again, such attempts by nationalist parties illustrates that initiatives are mainly used to preserve the primacy of the Latvian culture and language<sup>229</sup>.

In addition to these initiatives, there were also some other signature-gathering exercises in 2008 and 2009 to influence the policy agenda. Some associations tactically gathered non-notarised signatures to increase political pressure on the political elite<sup>230</sup>.

### 4.3 Explanations for the Latvian practice

Ten referendums – six more than in the case of Estonia – have been held in Latvia since re-independence. And many others have failed to collect the mandatory number of signatures. Again a structural and informal approach has to be used to explain the causes of variations and of success in the use of referendums in these countries. In Latvia, the success and variation in the number of referendums result to a large part from the formal institutional arrangements. The political elite and the citizens act within a framework of constitutional institutions that circumscribe and define their behaviour. According to ELLEN IMMERGUT, the different

225 IKSTENS JANIS, Latvia, *European Journal of Political Research* 42/2003, p. 1008 f.; AUERS, p. 63, p. 65.

226 See AUERS, p. 63.

227 See explanations under Chapter IV-B-10.

228 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=132497](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=132497) (accessed on 07.12.2012); «Es gibt kein stärkeres Mittel, um uns wütend zu machen», *Neue Zürcher Zeitung*, 18.02.2012, p. 7.

229 see AUERS, p. 63.

230 For more detail see AUERS, p. 61 f.

policy outcome is a result of different institutional designs of a country and not exclusively a result of the actors' decisions<sup>231</sup>. However, in Latvia there are some informal arrangements too. Within a constitutionally given framework, political parties and actors tend to use direct democratic instruments in different strategic ways and with different degrees of success. Insofar, it is the interaction between the formal arrangements and political players that define to what extent direct democracy is being used in Latvia.

#### **4.3.1 Legal constraints**

The most important difference to Estonian direct democracy concerns the degree of direct democratic institutions that are constitutionally given to the Latvian people. Indeed, there exist eight different direct democratic tools that can either be started automatically, like mandatory referendums, or by the authorities, top down. And most importantly, also a citizen-initiated direct democratic mechanism to create new laws is available to Latvians. Recently, Latvians got an additional bottom-up instrument that entitles them to initiate a national referendum regarding the recall of the parliament. And all types of referendums produce a legally binding result for all state institutions.

Due to a wide range of these direct democratic tools, one would expect that there is at the same time also a high frequency of use of direct democracy. However, there are several formal obstacles, which prevent Latvians from using these tools more effectively. Therefore, it is not only important to have different mechanisms of direct democracy, but also to ensure that it works practically. Otherwise any formal obstacle that rather favours the public elites than the people would cause a lack of interest and disappointment among the citizens.

The first legal constraint concerns policy areas of a referendum. Some political issues cannot be submitted to a national referendum. According to article 73 of the Latvian constitution, for instance, 'loans, taxes, custom duties, railroad tariffs, military conscription, declaration and commencement of war, peace treaties, declaration of a state of emergency and its termination, mobilisation and demobilisation, as well as agreements with other nations', or urgent laws pursuant to article 75 CLv are excluded from the referendum process.

A second constraint concerns signature collection, which is based on two collection stages. In Latvia there are nearly 1.5 Million registered voters. Article 78 in conjunction with article 65 of the Satversme enables the people to 'submit a fully elaborated draft of an amendment to the Constitution or of a law to the President, who shall present it to the Saeima'. But such a submission requires at least 10 percent of valid signatures of the whole electorate, which shall be gathered at a second stage. Compared to signature collection in Swiss direct democracy for instance, wherein nearly 2 percent of the registered voters – within a period of 18 months – are needed to propose a total or partial revision of the Federal Constitution, the Latvian threshold seems to be very high. This can hamper the collection of required signatures, especially if the collection time is limited to 30 days and signatures can only be collected at designated collection

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231 IMMERGUT ELLEN, *The Logic of Health Policy-making in France, Switzerland and Sweden*, in: STEINMO SVEN [et al.] (eds.), *Structuring Politics. Historical Institutionalism in Comparative Analysis*, (Cambridge 1992), p. 58, p. 85.

places<sup>232</sup>. Also, for the semi-plebiscite on repealing a law as indicated in article 72 CLv or for the citizens' initiative on recalling the Saeima, as article 14 CLv establishes, not less than one-tenth of the electorate is required in order to initiate a national referendum. One should also be aware of the fact that the referendum on repealing a law can only be triggered if the authorities suspend the proclamation of a law for period of two months in advance. Hence, to veto parliamentary laws, a joint action of authorities and citizens is needed.

The third obstacle for Latvian referendums results from both turnout and approval quorums that are required by the constitution. To be declared legally binding in a mandatory constitutional referendum, at least half of the eligible electorate has to vote in favour. The same criterion is also required for an adoption of a citizens' constitutional initiative<sup>233</sup>. Indeed, there is formally no turnout quorum required but, in fact, to reach such a high approval quorum, many citizens have to participate in the ballot. In a semi-plebiscite on repealing a law or in a citizens' legislative initiative, at least half of the number of electors that participated in the previous parliamentary election has to participate, and the majority of them have to vote in favour of the referendum. Another quorum pursuant to article 14 CLv is required when Latvian citizens initiate a referendum on recalling the parliament. To dissolve the parliament and set new elections to it, at least a majority of two thirds of the number of the voters who participated in the last parliamentary elections are necessary.

Turnout quorums, whether formal or factual, may be the most significant factor to effect the adoption of a referendum. As mentioned above, in Latvia there were three referendums on repealing a law, one citizens' constitutional and one citizens' legislative initiative that have been declared legally non-binding, despite the fact that they had all been accepted by the majority of the participants. An exception among these referendums is the presidential plebiscite on recalling the parliament; there neither a formal nor a factual turnout quorum is required.

#### **4.3.2 Informal constraints**

The five referendums that have been accepted by the majority of the participants, but have been declared legally non-binding due to a low turnout, illustrate how the interaction between institutions and political actors matters. Knowing there is both formally and factually a minimum turnout required, the opposition parties of the referendum insofar act tactically to avoid the approval of it. They do not only oppose such proposals but they also urge citizens to ignore these and not participate in the corresponding ballots, so that the decision is void. An exception was the last referendum on Russian as the second official language in February 2012, and this because of its cultural and historical significance for all Latvians. It is less advisable to introduce such quorums because it does not only strongly decrease the potential of an approval, but also the potential of a constructive political discourse over the issue that is subject to a referendum. The opponents of a reform should seek to convince the majority of the citizens with arguments and not simply by boycotting the ballot. Such a

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232 Art. 7, par. 1 LoNRLIaECI.

233 Art. 79 CLv.

mentality is neither a vital resource for the development of a critical civil society within a country, nor does it contribute to direct democracy.

A second informal aspect that influences the outcome of direct democracy in Latvia is caused by the party system. In Latvia the parliament is elected based on proportional representation. The formal rule of a proportional electoral system causes an informal multi-party system, which, according to LUISE P. MØLLER, creates different incentives for political parties to use referendums<sup>234</sup>. She states that the Latvian party system is a fragmented system that has been characterized by large coalition governments<sup>235</sup>. Considering the latest developments in the Latvian party system since 2002 and the emergence of new parties or fractions, as it has been described by JĀNIS IKSTENS in his annual Latvian reports<sup>236</sup>, we can confirm that the Latvian party system is still very volatile and unstable. There is a continuing alteration of frequency and level. The former president VALDIS ZATLERS's new political party, ZRP, established after his defeat in the presidential elections, does not promise any stabilisation in the party system at all. In such a fragmented and loose constellation, new parties and their electorate are less equipped to organise and win a popular vote, either by collecting signatures to initiate a referendum or by mobilising the supporters to achieve the requested minimum turnout on the polling day<sup>237</sup>. Indeed, most attempts in this sense of triggering citizens' initiatives have been investigated to attract political publicity for the parties and to increase popular support, especially in the lead-up to an election<sup>238</sup>.

Another informal constraining aspect results from the political culture itself. As far as the constitution is concerned, there is no lack of bottom-up direct democratic mechanism in Latvia. However, it still lacks a participatory culture. Twenty years after independence, participatory political culture within the population is still weak, otherwise it would make it easier for political parties to mobilise their supporters for their proposals or even to trigger a national referendum from the bottom up. And as mentioned above, turnout or approval quorums, in particular, are not conducive to strengthening such a participatory culture, which is why they should be either very low or totally inexistent.

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234 MØLLER, p. 281 f.

235 MØLLER, p. 285.

236 IKSTENS JANIS, Latvia, *European Journal of Political Research* 42/2003, p. 1001; IKSTENS JANIS, Latvia, *European Journal of Political Research* 43/2004, p. 1055; IKSTENS JANIS, Latvia, *European Journal of Political Research* 44/2005, p. 1077; IKSTENS JANIS, Latvia, *European Journal of Political Research* 48/2009, p. 1019.

237 similar MØLLER, p. 290.

238 see AUERS, p. 59.



## 5 Legal framework and practice of direct democracy in Lithuania

### 5.1 Direct democratic instruments in Lithuania

Lithuania is a unitary state with a parliamentary system. The single-chamber parliament is composed of 141<sup>239</sup> deputies, who are elected for a four-year term. The president of the state is also elected through a popular vote, but for a term of five years<sup>240</sup>. Direct election ensures the president a great degree of legitimacy as head of the state. This is also apparent in the presidential functions, which are more than representative ones. In particular, the president's strong position becomes clear in foreign policy<sup>241</sup>, which is why some scholars characterize Lithuania as a parliamentary-presidential system<sup>242</sup>. However, the president's decision-making competencies are dependent on the consensus of the government and on a strong parliament (Seimas)<sup>243</sup>. Therefore, Lithuania could also be referred to as a semi-presidential system dominated by parliament<sup>244</sup>.

Besides the government and parliament, there is an additional important political body that can be involved in the legislative process, namely the Lithuanian people. As article 4 of the constitution<sup>245</sup> states, 'the nation shall execute its supreme power either directly or through its democratically elected representatives'. Insofar, the Lithuanian representative democracy is completed by a system of decision-making on public issues in which citizens over 18 years can get involved directly<sup>246</sup>. The translation of the Lithuanian supreme power into the legislative process can occur in three ways. According to our classification, it can be required by the constitution, from above and, most importantly, from below, as provided for by the constitution. There are around 2,588,400 eligible citizens in Lithuania<sup>247</sup>. The current 'Law on Referendum' distinguishes between referendums that are mandatory and those that are consultative<sup>248</sup>. As in Estonia and Latvia, binding referendums enable Lithuanians to become a veto player within a decision-making process. Mandatory referendums are binding and designed to deal primarily with constitutional issues<sup>249</sup>, including Lithuania's

239 Art. 55, sec. 1, Constitution of the Republic of Lithuania of November 25, 1992 (CLt).

240 A second term is possible.

241 Art. 84, sec. 1 CLt.

242 KRUPAVICIUS/ZVALIAUSKAS, p. 120.

243 TAUBER JOACHIM, *Das politische System Litauens*, in: ISMAYR WOLFGANG (ed.), *Die politischen Systeme Osteuropas*, 3<sup>rd</sup> edition, (Wiesbaden 2010), p. 176 f., p. 179 (cit. TAUBER).

244 For more information on competences between the institutions of the parliament and the president: SAULIUS ARLAUSKAS, *Sovereignty of a Nation in the Parliamentary System of Lithuania. Problems and Proposals*, *Limes* 3(2)/2010, p. 99-109.

245 Adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992.

246 Art. 2, par. 2, Law on Referendums (LoR) passed by the Lithuanian Parliament on 4 June 2002.

247 see The Central Electoral Commission of the Republic of Lithuania (CECLt), [http://www.vrk.lt/2012\\_seimo\\_rinkimai/output\\_en/referendumas/referendumas.html](http://www.vrk.lt/2012_seimo_rinkimai/output_en/referendumas/referendumas.html) (accessed on 05.11.2012).

248 Art. 3 LoR.

249 According to Art. 168 of Seimas, statute laws provided in Art. 150 of the constitution, constitutional amendments, laws which are directly specified in the constitution, as well as other laws which give specific expression to constitutional norms and are set forth in the Law on the List of Constitutional Laws can be

membership in international organisations in certain respects, or to amend the constitutional act of 8 June 1992<sup>250</sup>. But, legally it is also possible to hold a mandatory referendum on issues that might refer to other national issues or to legal norms below the constitutional level<sup>251</sup>. And any issue below the constitutional normative level, which has not been deliberated in a mandatory referendum, is consultative. Although they are advisory, the parliament has to hold a debate on the issue, but the final say is vested in the parliament<sup>252</sup>. Contrary to Estonia and Latvia, in Lithuania there is no restriction on the range of issues for top-down and bottom-up referendums. However, a serious weakness of the Lithuanian referendum rights arises from other legal obstacles. The constitution requires a very high threshold for participation and approval, and prescribes a short time for the collection of a large number of signatures.

All specific rules and procedures are established by the 'Law on Referendum'<sup>253</sup> (LoR), which had been passed by the Supreme Soviet of the Soviet Socialist Republic of Lithuania in 1989. Even at that time the article 3 of the LoR guaranteed Lithuanian citizens, political parties, and other political and public organisations the right to campaign without any restrictions for the proposal to call a referendum or for the adoption of legal provisions, as well as for the settlement of issues of utmost significance. In the following years, the 'Law on Referendums' was amended by the Seimas several times, whereby some amendments have been found to be inconsistent with the constitution by the constitutional court<sup>254</sup>. But a real discussion on new proposals to the law had started in 1999, evidently caused by the forthcoming referendum on EU accession<sup>255</sup>. Finally, on 4 June 2002, the LoR was substituted by a totally new law. And the last amendment to the new 'Law on Referendums' was made on 10 April 2008<sup>256</sup>.

Today, depending on the categorisation made in this paper, nine different direct democratic tools can be applied in Lithuania (for an overview see *Table 3*). The form and complexity of their procedure is determined by three mechanisms of direct democracy that have been characterised in the beginning. Although the complexity also results from numerous and often controversial changes that were made to the Lithuanian legislation<sup>257</sup>. Referendums are being organised and carried out by the Central Electoral Committee.

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deemed to be constitutional laws.

250 KRUPAVICIUS ALGIS, Lithuania, *European Journal of Political Research* 42/2003, p. 1017.

251 The constitution does not make any clear specifications. An advice for such a distinction can be derived from Art. 4, par. 2 and Art. 7, par. 4 of the LoR. See also KRUPAVICIUS ALGIS, *Citizens' Initiatives in Lithuania: Initiative Institutions and Their Political Impact in a New Democracy*, in: SETÄLÄ MAIJA/SCHILLER THEO (eds.), *Citizens' Initiatives in Europe. Procedures and Consequences of Agenda-Setting by Citizens* (Basingstoke 2012), p. 136 (cit. KRUPAVICIUS, *Citizens' Initiatives*).

252 KRUPAVICIUS, *Citizens' Initiatives*, p. 136.

253 see also Art. 9, sec. 2 CLt.

254 KRUPAVICIUS/ZVALIAUSKAS, p. 113.

255 MAZYLIUS LIUDAS/UNIKAITE INGRIDA, *The Lithuanian EU Accession Referendum 10-11 May 2003. Referendum Briefing No. 8 for European Parties Elections and Referendums Network EPERN*, p. 1 in: <http://www.sussex.ac.uk/sei/research/europeanpartieselectionsreferendumsnetwork/epernreferendumbriefings> (accessed on 14.12.2012) (cit. MAZYLIUS/UNIKAITE).

256 HOFFMANN, *Baltikum*, p. 320.

257 MAZYLIUS/UNIKAITE, p. 2.



### **5.1.1 Referendums required by constitution**

According to article 9 CLt, 'most significant issues concerning the existence of the state and the nation shall be decided by a referendum'. An issue can be deemed as important if the constitution or law explicitly demands its decision by a referendum. In the Lithuanian case, there are three different mandatory referendums that are required by the constitution or the law: mandatory constitutional referendums, the mandatory referendum on the amendment of the Constitutional Act, and the mandatory referendum on participation in international organisations<sup>258</sup>. All three instruments are proactive and aim to change the status quo. In most cases, these referendums are framed by the parliament and triggering follows automatically, as required by the constitution. But, framing of referred issues can also be done from the bottom up, namely, if citizens propose a policy change on the issue individually<sup>259</sup>. Another framing actor can also appear if the proposal submitted to vote deals with international treaties. Here the framing is mostly a result of a joint action of the national parliament and the other state or the international organisation.

#### **5.1.1.1 The mandatory constitutional referendum**

In general, amendments of the majority part of constitutional provisions must be considered and voted on twice in the parliament. To be deemed adopted, a draft law on the alteration of the constitution has to be approved in both sessions by a qualified majority of not less than two-thirds of all members of the parliament and no referendum is required<sup>260</sup>. However, in case of an alteration of provisions of Chapter I and Chapter XIV of the constitution, a popular vote is mandatory, otherwise these provisions cannot be changed<sup>261</sup>. Chapter I, 'The State of Lithuania', covers the first 17 articles of the constitution that determine the form and governing rules<sup>262</sup> of the Lithuanian political system, including other fundamentals, such as territorial integrity, citizenship, language, the state flag and the capital. Chapter XIV, consisting of articles 147-154 CLt, refers to these legal provisions that concern the 'Alteration of the Constitution'. It is forbidden to amend the constitution during a state of emergency or martial law<sup>263</sup>.

#### **5.1.1.2 The mandatory referendum on the Constitutional Act**

The mandatory referendum on the constitutional act is a further direct democratic tool, which is triggered automatically if there is any alteration to the Constitutional Act of 8 June 1992 'on the Non-Alignment of the Republic of Lithuania to Post-Soviet-Eastern Alliances'<sup>264</sup>.

#### **5.1.1.3 The mandatory referendum on participation in an International Organisation**

Any decision concerning the Lithuanian membership in international organisations that requires a 'partial transfer of the scope of competence of

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258 Art. 4, par. 1, sec. 1, 2, 3, 4 LoR.

259 see Chapter V-A-3 Citizen-initiated referendums.

260 Art. 148, sec. 3 CLt.

261 Art. 148, sec. 1 and 2 CLt; Art. 4, par. 1, sec. 1-3 LoR.

262 Including the referendum rights as indicated under Art. 9 CLt.

263 Art. 147, sec. 2 CLt.

264 Art. 4, par. 1, sec. 4 LoR.

government bodies to the institutions of international organisations or jurisdictions thereof' has to be submitted to a popular vote as well<sup>265</sup>.

#### **5.1.1.4 The procedure of referendums required by the constitution**

All three 'automatic referendums' are binding and conducted by almost the same procedures. Any referendum on the amendment of chapters I and XIV of the constitution, on the Constitutional Act of 8 June 1992, as well as on participation in international organisations in certain respects, as indicated above, require both a high turnout and approval quorum. According to article 7, par. 1 LoR 'A mandatory referendum shall be deemed to have taken place if over one half of the citizens, who have the right to vote and have been registered in electoral rolls, participated in it'. If a participation quorum fails to reach 50 percent of the total electorate, an automatic referendum is deemed void, even if approved.

For an approval of a 'mandatory constitutional referendum' the support of more than half of registered electorate is required<sup>266</sup>. One deviation from this approval provision concerns the alteration of the first article of the constitution, which states that 'the state of Lithuania shall be an independent, democratic republic'. The first provision of the constitution can 'only be altered by referendum if not less than three-fourths of the citizens of Lithuania with electoral rights vote in favour thereof'<sup>267</sup>.

The same wide approval quorum is also asked for an amendment of the Constitutional Act of 8 June 1992, as described under 'mandatory referendum on constitutional act'<sup>268</sup>. The approval quorum for the third compulsory referendum, the 'mandatory referendum on participation in international organizations', can vary. Depending on the content of the international treaty, which may require an alteration of articles of chapters I and XIV CLt, the quorum will be at least 50 percent of the registered electorate. If not, the referendum can be deemed approved if more than half of the participants in the vote, but at least one third of the citizens having the right to vote and having been registered on electoral rolls, have accepted it<sup>269</sup>.

After the vote, the Central Electoral Committee has to establish and announce the final results in the official gazette 'Valsytybes zinios'<sup>270</sup>. In case of an approval it has also to present the text of the resolution adopted by referendum to the president<sup>271</sup>. The president has to sign and officially proclaim the law and other legal enactments or resolutions passed by referendum no later than within five days after. Should the president fail to sign and proclaim such a law, then the signing and proclaiming must be fulfilled by the chairman<sup>272</sup>. A law passed by referendum on an amendment to the constitution enters into force no earlier than one month from the date of its approval<sup>273</sup>. Other laws that pass an automatic

265 Art. 4, par. 1, sec. 5 LoR.

266 Art. 7, par. 3 LoR.

267 Art. 148, sec. 1 CLt and Art. 7, par. 2 LoR.

268 Art. 7, par. 2 LoR.

269 Art. 7, par. 4 LoR.

270 Art. 71 and 73 LoR.

271 Art. 73, par. 2 LoR.

272 Art. 78, par. 2 and 3 LoR.

273 Art. 78, par. 4 LoR.

referendum shall enter into force on the day of their publication in the official gazette or on the day stipulated in them<sup>274</sup>.

### **5.1.2 Referendums from above**

In addition to Estonia and Latvia, the right to trigger a referendum from above is also given to the Lithuanian authorities. The Lithuanian top-down direct democratic mechanism is composed of two instruments, namely the 'parliamentary constitutional plebiscite' and the 'parliamentary plebiscite on other issues, laws and provisions'. Considering the wording of article 9, par. 3 LoR, 'a group comprising of at least one-fourth of the Seimas members may submit to the Seimas a proposal to call a referendum', it can be suggested that a parliamentary plebiscite whether constitutional or not can either be proactive or reactive.

A *proactive* policy change supporting a parliamentary plebiscite may occur if a reform wing in the parliament is afraid that it may not receive the support of the required parliamentary majority and thus wants to get the needed approval of the people (framing and asking by the same actor). And a *reactive* status quo supporting a parliamentary plebiscite may be held if a part of the parliamentary members trigger a referendum on a resolution that has been framed by the other part of the parliament (different actors for framing and triggering). Certain that the majority of parliament would approve the issue, they then attempted to veto it by a popular decision. In both cases the necessary threshold for triggering a referendum stands at least at one-fourth of all parliaments members<sup>275</sup>. But, it is also possible that a parliamentary majority triggers a referendum.

The threshold for calling a parliamentary plebiscite has been decreased two times since 1992. In the beginning more than half of the parliamentary members and after 1996 one-third of the deputies were asked to initiate the calling of a referendum<sup>276</sup>. It can be seen that the right to initiate a plebiscitary referendum has become somewhat more an instrument of the parliamentary minorities. But, still it is a high obstacle for small parties in the parliament. This means, in the beginning the proposal of the parliamentary group has to be deliberated and considered in the parliament<sup>277</sup>.

#### **5.1.2.1 The parliamentary constitutional plebiscite**

According to article 9, par. 1 LoR the right to initiate the calling of a referendum is given to the citizens, but also to the Lithuanian parliament<sup>278</sup>. As mentioned above, such referendums can either be proactive or reactive. The procedures on submitting the issue to popular vote are the same. The proposal of the parliamentary group to call a referendum has to indicate the type of referendum (mandatory or consultative: resolutions on constitutional issues are mandatory) and the text of the resolution that should be adopted by a referendum<sup>279</sup>. The resolution can either concern a motion to alter or supplement the constitution, which has been submitted by a parliamentary minority consisting of a group of

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274 Art. 78, par. 5 LoR.

275 Art. 9, par. 3 LoR.

276 KRUPAVICIUS, Citizens' Initiatives, p. 136 f.

277 Art. 12, par. 1 LoR.

278 Art. 9, par. 1 LoR.

279 Art. 12, par. 1 LoR.

not less than one-fourth of all members of the parliament<sup>280</sup>, or an issue framed by a parliamentary majority that should be blocked by popular decision. For both types of constitutional plebiscites (proactive or reactive), a group comprising of at least one-fourth of the members of parliament is needed to submit a proposal to parliament calling for a referendum<sup>281</sup>.

It should be noted that no policy area is excluded from the referendum process. The parliamentary group can propose resolutions for any constitutional issue that it deems significant for the existence of state and the nation<sup>282</sup>. The parliament's decision on the proposal to call a referendum has to be made in accordance with the procedure set forth by the Seimas Statute<sup>283</sup> and the referendum must be held 'no later than in three months and no sooner than in two months from the day of passing the Seimas Resolution on the date of calling the referendum'<sup>284</sup>.

As in other referendums, parliamentary plebiscites also require a turnout quorum of 50 percent of the total electorate<sup>285</sup>. A constitutional plebiscite fails if fewer than 50 percent of the electorate have taken part in it. Depending on the issue submitted to referendum, the procedure on approval can vary. If it refers to provisions of chapters I and XIV of the constitution, then the approval quorum ranges from at least one-half to three-fourths of the whole electorate. And if it refers to other constitutional provisions than those of chapters I and XIV, then the parliamentary constitutional plebiscite shall be deemed adopted if it has been approved by at least one-third of the electorate<sup>286</sup>. Before the total revision of LoR in 2002, the minimum approval quorum for such referendums was at least 50 percent of all eligible voters. With the new law that had partially lowered some approval quorums, direct democracy became a bit more citizen-friendly. But, it is still a high obstacle in the procedure of direct legislation. If the law passes a referendum on an amendment to the constitution, it has to enter into force not later than after one month from the day it was passed by the referendum<sup>287</sup>.

#### **5.1.2.2 The parliamentary plebiscite on other issues, laws, provisions**

As par. 3 of article 9 CLt states, the right of calling a referendum belongs, besides to the citizens, also to a parliamentary group comprising of not less than one-fourth (141:4) of the members of parliament<sup>288</sup>. Here, the article does not make any difference as to whether such a referendum is applicable to constitutional or other issues. In conjunction with article 3; article 4, par. 2; article 5; article 7, par. 1, sec. 4; article 12, par. 1 LoR, as well as with article 67, par. 3 and article 69, sec. 4<sup>289</sup> CLt, we can assume that a parliamentary plebiscite is possible for other issues and laws than what is provided by the constitution. Once the parliamentary minority considers an issue fundamental to the State and the

280 Art. 147, sec. 1 CLt.

281 Art. 9, par. 3 LoR.

282 consider Art. 4, par. 2; Art. 9, par. 3 LoR.

283 Art. 9, par. 3 and Art. 12, par. 1 LoR, see Chapters XIX–XXVI of Seimas of the Republic of Lithuania Statute of February 17, 1994.

284 Art. 15, par. 1 and 2 LoR

285 Art. 7, par. 1 LoR.

286 Art. 7, par. 1–4 LoR.

287 Art. 78, par. 4 LoR.

288 Art. 9, par. 1 and 3 LoR.

289 Provisions of laws of Lithuania may also be adopted by referendum, Art. 69, sec. 4 CLt.

Nation as important, it can become subject to a referendum, too<sup>290</sup>. As for parliamentary constitutional plebiscites, also for these referendums, formally, no restriction on policy areas is prescribed. Such authorities' referendums can be held with regard to any other issues and laws<sup>291</sup>. Also here, both intensions of the referendum are possible: a proactive parliamentary plebiscite to alter the law and a reactive parliamentary plebiscite to veto it. As with constitutional plebiscites, the minority proposal on other issues must also be deliberated by the parliament.

One distinction with regard to constitutional plebiscites is the character of a referendum. Here, as far as the proposal does not deal with constitutional matters, it can either be *consultative* or *binding*. The parliamentary group must indicate the type of referendum, and, according to the procedure set forth in the 'Seimas Statute', the parliament adopts a decision on it. For the validation of the results, a turnout quorum of 50 percent of the total electorate is required also here<sup>292</sup>. To be adopted at ballot, a consultative minority resolution has to be favoured by at least one half (=25% of total electorate) of the participants<sup>293</sup>. Even if approved by the citizens, the final decision on advisory parliamentary plebiscites to come into force still depends on the volition of the whole parliament. It is up to the parliament whether or not to consider the voters' decision<sup>294</sup>. By contrast, a resolution regarding other issues that has been framed as a binding referendum can be deemed as approved and legally binding for all state authorities if at least one-third of the electorate favours it<sup>295</sup>, and it enters into force on the day of its publication in the official gazette<sup>296</sup>.

### 5.1.3 Citizen-initiated referendums

Citizen-initiated referendums belong to the bottom-up mechanism of direct democracy. It can either be a 'citizens' facultative referendum' to refuse an amendment to a specific law or public issue that has been adopted by the public authorities or a 'citizens' initiative' to change the status quo by creating a law from below. In both cases a collection of a certain number of signatures of eligible citizens is needed. However, due to its popular framing and triggering features, the second type of citizen-initiated referendum – the citizens' initiative – complies much more with the sense of direct democracy.

Currently, the Lithuanian constitution does not distinguish very clearly between the citizens' facultative referendum and citizens' initiative. But, following the wording of article 9 of the constitution, which states that 'a referendum shall be announced if not fewer than 300,000 citizens with electoral rights so request'<sup>297</sup>, we can assume that citizen-initiated referendums can either be reactive, to refuse parliamentary decisions (citizens' facultative referendum), or proactive, to enact or amend legal provisions. Policy changing citizens' initiatives can be subclassified into 'citizens' constitutional initiative', 'citizens' initiative on laws

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290 Art. 9, sec. 1 CLt.

291 consider Art. 4, par. 2; Art. 7, par. 4 and Art. 9, par. 3 LoR.

292 Art. 7, par. 1 and Art. 8, par. 1 LoR.

293 Art. 8, par. 1 and 2 LoR.

294 Art. 8, par. 3 LoR.

295 Art. 7, par. 4 LoR.

296 Art. 78, par. 5 LoR.

297 see also Art. 3 and Art. 9, par. 1 LoR.

and other issues' and 'citizens' consultative initiative'<sup>298</sup>. All three instruments are proactive, to create new laws, and all are framed and triggered by the citizens. However, the citizens control only the first and second popular initiative fully since the outcome of the third instrument is consultative and not binding, unlike the first and second instrument. Therefore, due to the third instrument's non-binding character, the people cannot be introduced into the decision-making process as one additional veto player.

In Lithuania, also a further instrument, the so-called 'citizens' agenda initiative' persists<sup>299</sup>. But, it is important to note that the Lithuanian agenda initiative does not form part of referendum rights since it works rather like a petition. It contains a proposal addressed to the parliament that has to consider but not submit it to a popular vote.

#### **5.1.3.1 The citizens' facultative referendum**

The Lithuanian constitution does not clearly state whether the people are entitled to veto parliamentary decisions. Nevertheless, following article 9, par. 2 (A referendum shall also be announced if not fewer than 300,000 citizens with the electoral right so request) it can be said that the citizens are also empowered to trigger a binding or consultative referendum on any kind of parliamentary decision<sup>300</sup>. As for citizens' initiatives, three months are given to collect the minimum number of signatures<sup>301</sup>. For an approval, at least half of the electorate has to participate and, depending on the issue, the necessary quorum for turnout can vary<sup>302</sup>.

#### **5.1.3.2 The citizens' constitutional initiative**

Besides most significant issues that are established to automatically be put to a referendum (required referendums) by the constitution<sup>303</sup>, there are additional important subjects concerning core state and the national issues that can be decided by a mandatory referendum, if no fewer than 300,000 citizens so request<sup>304</sup>. This instrument refers to changes to the constitution, which is supposed to contain most significant principles and procedures of the state and the nation. And there is no restriction on subject matter. Any issue, whether political, economical or societal, can be adopted or altered or supplemented by such a tool if it is considered as essential by the people<sup>305</sup>.

#### **5.1.3.3 The citizens' initiative on laws and other issues**

Although most significant issues are framed in the constitution, it has to be considered that legally it is not prohibited to use the citizens' initiative to create a new law<sup>306</sup>. The possibility of referendums on laws is also evident if we consider section 4 of article 69 CLt. It emphasises that 'provisions for laws of the Republic

298 Art. 9, sec. 2, Art. 147, sec. 1 CLt and Art. 4, par. 2, Art. 5 LoR.

299 Art. 68, sec. 2 CLt.

300 see also Art. 9, par. 2 LoR.

301 Art. 11, par. 5 LoR.

302 Art. 7, par. 1 and Art. 8, par. 1 LoR.

303 Provisions of Chapter I and XIV of the Constitution, participation in international organisations, amendment to the Constitutional Act of June 8, 1992.

304 Art. 9, sec. 2 CLt, Art. 147, sec. 1 CLt and Art. 4, par. 2 LoR.

305 see Art. 9, sec. 1 and 3 CLt.

306 see Art. 9 CLt and also KRUPAVICIUS, Citizens' Initiatives, p. 136.



of Lithuania may also be adopted by referendum<sup>307</sup>. A referendum might also be triggered for an adoption of a specific public issue if over 300,000 citizens deem it important. Also here, legally no restriction on subject matter is foreseen<sup>308</sup>.

#### **5.1.3.4 The citizens' consultative initiative**

Consultative referendums can be held with respect to other issues of utmost importance to the state and the people. However, also here at least 300,000 signatures are needed to trigger a consultative initiative<sup>309</sup>. According to the provisions of the constitution and LoR, it is not always possible to clearly distinguish the kinds of issues that can be subject to such an initiative. If we follow ALGIS KRUPAVICIUS' argumentation, we can say that no consultative referendum can be held on constitutional issues<sup>310</sup>.

#### **5.1.3.5 Procedures of citizens' initiatives**

The Law on Referendums (LoR) establishes the procedures of initiation, announcement organisation and execution of referendums. The procedures of 'citizens' constitutional initiative', 'citizens' initiative on laws and other issues' and 'citizens' consultative initiative' are subject to almost the same legal requirements<sup>311</sup>. Unfortunately, in many cases the LoR does not always make a clear distinction between the different types of citizen-initiated referendums.

To launch (framing) an initiative from below at least 15 eligible citizens have to form an initiative group<sup>312</sup>. The proponents have to file their application to the Central Electoral Commission of Lithuania (CECLt). The initiative group has to indicate the referendum type (mandatory or consultative) and if their resolution for adoption by referendum consists of a preliminary or final text<sup>313</sup>. The formal distinction between preliminary and final text illustrates that Lithuanians are entitled to frame their proposal in both legal forms of an initiative. It can either be proposed as a general suggestion (preliminary text) or as a formulated draft (final text). In case the proposed text is preliminary, the Seimas Office has to render assistance in drafting the final text of the resolution by enlisting legal experts<sup>314</sup>. Once all the members of the initiative group have signed the text of the resolution, it shall be deemed final and any alteration of the text is prohibited<sup>315</sup>. Thereafter the collection of citizens' signatures for the initiative to call a citizens' referendum begins. A three-month time limit (two months before 1996) is set to collect not fewer than 300,000 signatures<sup>316</sup>. This high signature quota to trigger a popular initiative, which already existed in the LoR of 1989, remains unchanged.

307 Art. 69, sec. 4 CLt.

308 see Art. 9, sec. 1 and 3 CLt.

309 Art. 5 LoR.

310 KRUPAVICIUS, Citizens' Initiatives, p. 136 f.

311 It is assumed that the citizens' facultative referendum follows the same procedural steps.

312 Art. 10, par. 1 LoR.

313 Art. 10, par. 2 LoR.

314 Art. 6, par. 2 sec. 3, Art. 10, par. 4 LoR.

315 Art. 10, par. 4 and 6 LoR.

316 Art. 11, par. 5 LoR.

At least, there is no restriction on collection locations. Signatures can be collected in any public place<sup>317</sup>. After the time limit, all signature collection lists have first to be verified by the CECLt within 15 days. The committee, having determined that the documents meet the requirements of the LoR, gives to the parliament the final act along with the citizens' petitions and its own conclusions<sup>318</sup>. One exception is made if up to 0.5 percent of signatures are lacking. In such cases the CECLt informs the initiative group and sets an additional 15-day time limit to make up for this shortfall<sup>319</sup>. In case of a violation of the time limit or of other principles of the collection set forth in the law, the CECLt refuses the proponents' petition to call referendum. The initiative group has the right to appeal the committee's decision to the Superior Administrative Court of Lithuania<sup>320</sup>.

If there is no violation of the principles, the CECLt transmits the final act of the citizens' group along with citizens' valid signatures and the committee's conclusions to the parliament for deliberation. Within one month the parliament has to pass the resolution on the date of calling the referendum<sup>321</sup>. As in Latvia, there is no formal provision allowing the parliament to draft a counter-proposal to a citizens' initiative. Regardless of whether mandatory or consultative, a referendum has to be announced<sup>322</sup>. The referendum has to be held no later than three and no sooner than two months from the day of passing the parliamentary resolution on the date of calling the referendum<sup>323</sup>. But a referendum may be not held if the group of experts formed in the Seimas conclude that the citizens' text may not be in keeping with the Lithuanian constitution<sup>324</sup>. For such cases the law does not state whether there is a possibility to appeal parliament's decision to the constitutional court. If not, the Lithuanian procedure with regard to the legality check is quite similar to the initiatives procedure in Switzerland, wherein the Swiss parliament, as a final instance, checks the constitutionality of citizens' initiatives<sup>325</sup>.

To be deemed as having taken place, in all three citizen-initiated referendums at least one half of the registered electorate has to take part<sup>326</sup>. After the end of the referendum vote, all counting records are to be delivered to the CECLt. The committee is responsible for establishing and announcing the final results officially<sup>327</sup>.

The main difference between 'citizens' constitutional initiative', 'citizens' initiative on laws and other issues' and 'citizens' consultative initiative' concerns the approval quorum and to their legal character. The approval quorum for a 'citizens' constitutional initiative' depends on the constitutional issue that is submitted to a vote. If it refers to the same issues for which a mandatory referendum is required by law, the approval quorum can vary. At least three-

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317 Art. 11, par. 4, 5, 6, 9 LoR.

318 Art. 13, par. 1 LoR.

319 Art. 13, par. 2 LoR.

320 Art. 13, par. 3 LoR.

321 Art. 14, par. 1 LoR.

322 Art. 9, sec. 3 CLt.

323 Art. 15, par. 1 and 2 LoR.

324 Art. 14, par. 2.

325 Art. 139, par. 3 of the Swiss Federal Constitution of April 18, 1999 (Cst-CH).

326 Art. 7, par. 1 and Art. 8, par. 1 LoR.

327 Art. 70; Art. 71 par. 1; Art. 73, par. 1 LoR.



fourth yes-votes of the registered electorate are asked for an amendment of the provision of article one of the constitution<sup>328</sup>. And for an amendment of a provision of chapter I<sup>329</sup> and XIV of the constitution, more than 50 percent support from the whole registered electorate is required<sup>330</sup>. Other constitutional issues can be deemed approved if more than one half of the participants in the referendum, but at least one-third of the registered electorate has voted in favour thereof<sup>331</sup>. The same approval quota of one-third of the total electorate is also required for an adoption of a 'citizens' initiative on laws and other issues'<sup>332</sup>. Until 2002 to pass such citizen-initiated proposals the LoR required a very high approval quorum (50 percent of the electorate); the new LoR, however, has lowered this quorum<sup>333</sup>.

A law passed by referendum on an amendment to the constitution, as the 'citizens' constitutional referendum' demands, is binding and, hence, has to enter into force no earlier than after one month from the day it was passed by referendum<sup>334</sup>. Also a law according to 'citizens' initiative on laws and other issues' that has been approved by a referendum is binding. It enters into force on the day of its publication in the official gazette, provided that a later entry into force date is not stipulated in it<sup>335</sup>.

For a 'citizens' consultative initiative' over one half of the participants (at least 25 percent of the registered electorate) is needed to approve the resolution<sup>336</sup>. However, due to its advisory character, the decision on the referendum is not binding and the issue has to be deliberated in a parliamentary session, according to the procedure established by the Seimas Statute, within one month from the announcement of its results, and it may come into force if the parliament votes accordingly<sup>337</sup>.

#### **5.1.3.6 The citizens' agenda initiative: something between referendum and petition**

Besides the institutions of the referendum<sup>338</sup> and the right of petition<sup>339</sup>, there is a further democratic instrument in Lithuania, namely the 'citizens' agenda initiative'<sup>340</sup>. It is a tool somewhere between the two political rights of referendum and petition. It allows a certain number of citizens eligible to vote to set a particular issue on the parliament's agenda, however, without any legal force to bring it to a popular vote. Also, for this instrument there is no issue that is prohibited from being presented. But, it does not belong to the referendum rights category because it does not necessarily trigger a referendum, nor does it

328 Art. 7, par. 2 LoR and Art. 148, sec. 1 CLt.

329 with exception of Art. 1 of the Constitution.

330 Art. 7, par. 3 LoR.

331 Art. 7, par. 4 LoR.

332 Art. 7, par. 4 LoR.

333 KRUPAVICIUS, Citizens' Initiatives, p. 137.

334 Art. 78, par. 4 LoR.

335 Art. 78, par. 5 LoR.

336 Art. 8, par. 2 and 3 LoR.

337 Art. 8, par. 2 and 3 LoR.

338 see Art. 4 and Art. 5 LoR.

339 Art. 33 CLt.

340 Art. 68, sec. 2 CLt.

entirely fit the description of a petition<sup>341</sup>. In contrast to a petition, it can be forwarded to the parliament merely in order to propose a new legislation to be voted on. Further, only Lithuanian citizens over 18 years and eligible to vote are entitled to apply this instrument<sup>342</sup>, whilst initiating a petition is accessible to everybody who has reached the age of 16 years and a petition can be forwarded to all public authorities<sup>343</sup>.

The right of legislative initiative also differs from a procedural point of view. At least ten citizens with the right of vote are requested to form the steering group of such an idea<sup>344</sup>. They have to submit their proposal to the CECLt to its consideration<sup>345</sup>. Thereafter, not fewer than 50,000 signatures within two months to propose a draft law and not fewer than 300,000 signatures within four months to suggest a constitutional proposal (adoption, amendment, supplementation) to the parliament are needed<sup>346</sup>. The nature of the Lithuanian agenda initiative is a proposing and not an abrogative one. Which means that it is not possible to repeal an existing law<sup>347</sup>. After the collection, signature collection sheets have to be submitted to the CECLt for verification<sup>348</sup>, the commission transmits the signatures and citizens' proposal to parliament for its presentation and consideration<sup>349</sup>. The majority of the parliamentarians present are needed to decide whether a citizens' agenda initiative should be accepted<sup>350</sup>. Due to its non-binding character, the Seimas is free to refuse or accept the entire or some parts of the proposal. In case of an acceptance, the proposed law or alteration to the constitution has to be adopted, according to the procedure established by the Seimas Statute<sup>351</sup>.

It is reasonable to exclude a citizens' agenda initiative from the realm of direct democracy because it does not provide a referendum process with a binding result. A referendum may occur if the agenda initiative refers to a constitutional issue that has to be submitted automatically to a referendum, and if the parliament's majority was willing to further consider the citizens' motion at its session. Nevertheless, it is very unlikely that a part of the citizens would collect 300,000 signatures to start an advisory procedure to amend such provisions of the constitution. They would rather trigger the direct procedure for amending the constitution, namely through a 'citizens' constitutional referendum'. It might be that a 'citizens' agenda initiative' places strong public pressure on the parliament. Nevertheless, in addition to the referendum and petition rights, this kind of political instrument, without any legal binding force and with relatively restrictive legal barriers, seems – compared with referendums – to be a little

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341 According to IRI, a petition is a written submission with no particular form that any person may send to an authority. It can contain a proposal, a criticism or a request, and the subject matter may be any state activity, IRI, p. 238.

342 Art. 2 of the Law on citizens' legislatures of the Republic of Lithuania of December 22, 1998 (LoCLt); There are also procedural differences.

343 Art. 2, par. 2 Law on Petitions of the Republic of Lithuania of July 7, 1999 (LoP).

344 Art. 5, par. 1 LoCLt.

345 Art. 6, par. 1 LoCLt.

346 Art. 2, par. 1 and 2, Art. 9, par. 1 and 2 (LoCLt); see also Art. 68, sec. 2 CLt.

347 KRUPAVICIUS, Citizens' Initiatives, p. 138.

348 Art. 11 and Art. 12 LoCLt.

349 Art. 13, par. 1, Art. 17 and Art. 19 LoCLt.

350 Art. 19 LoCLt.




351 Art. 20 LoCLt.

superfluous. As the right of petition, it remains a blunt political right. This might also become obvious if we consider the use and efficiency of this democratic instrument. According to ALGIS KRUPAVICIUS, seven attempts have been made since 1999, and in only one case the parliament passed the proposed changes to the law. In six other cases the initiators (mainly political parties) either failed to collect the required number of signatures or the Seimas did not deliberate the initiative<sup>352</sup>.

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352 For more detail see KRUPAVICIUS, *Citizens' Initiatives*, p. 145 f.

Table 3: Direct Democratic Institutions and their Use in Lithuania (1991–2012)

MECHANISM OF DIRECT DEMOCRACY	NAME OF DD INSTITUTION	SUBJECT MATTER	SUBMITTED DUE TO	CHARACTER	INTENSION	POL. ACTOR / VETO-PLAYER <sup>1</sup>		FORMAL RESTRICTIONS FOR						USE
						ASKING (FRAMING)	TRIGGERING	TURNOUT	APPROVAL	SIGNATURES	COLLECTION TIME	COLLECTION PLACE	RANGE OF ISSUES	q / a / ai <sup>2</sup>
	Mandatory constitutional referendum	to alter the provisions of chapter I and XIV of the constitution	law	binding	proactive	parliament (citizens)	automatic	>50% of total electorate <sup>3</sup>	>1/2 of electorate, exception for first article: >3/4 of electorate	–	–	–	yes referred issues	1 / 1 / 0
	Mandatory referendum on constitutional act	to alter the provisions of the constitutional act of 8 June 1992	law	binding	proactive	parliament (citizens)	automatic	>50% of total electorate	>3/4 of total electorate	–	–	–	yes only for referred act	0 / 0 / 0
	Mandatory referendum acc. to International Organizations	to access Int. Org. that involves partial transfer of state competencies	law	binding	proactive	parliament / Int. Org. (citizens)	automatic	>50% of total electorate	either >1/3 or >1/2 of total electorate	–	–	–	yes only for accession to Int. Org.	1 / 1 / 0
	Parliamentary constitutional plebiscite	to alter and supplement the constitution	parliament	binding	proactive / reactive	>1/4 of the parliament <sup>4</sup> in case of proactive otherwise parliament	>1/4 of the parliament	>50% of total electorate	either >1/3 or >1/2 or >3/4 of total electorate	–	–	–	no	5 / 0 / 4
	Parliamentary plebiscite on other issues, laws, provisions	to adopt or amend or a national issue or a law	parliament	binding or consultative	proactive / reactive	>1/4 of the parliament in case of proactive otherwise parliament	>1/4 of the parliament	>50% of total electorate	if binding >1/3 of total electorate if consultative >1/2 of participants (>25% of total electorate)	–	–	–	no	4 <sup>6</sup> / 2 / 1
	Citizens' facultative referendum	to veto parliamentary decisions, resolutions	citizens	binding or consultative	reactive	parliament	>300'000 = 11.6% of total electorate	>50% of total electorate	either >1/3 or >1/2 or >3/4 of total electorate	>300'000 = 11.6% of total electorate	3 months <sup>5</sup>	public places	no	0 / 0 / 0
	Citizens' constitutional initiative	to initiate a general suggestion or a formulated draft to alter the constitution	citizens	binding	proactive	>15 eligible citizens	>300'000 = 11.6% of total electorate	>50% of total electorate	either >1/3 or >1/2 or >3/4 of total electorate	>300'000 = 11.6% of total electorate	3 months <sup>5</sup>	public places	no	0 / 0 / 0
	Citizens' initiative on laws and other issues	to initiate a general suggestion or a formulated draft to adopt a law or another issue	citizens	binding	proactive	>15 eligible citizens	>300'000 = 11.6% of total electorate	>50% of total electorate	>1/3 of total electorate	>300'000 = 11.6% of total electorate	3 months <sup>5</sup>	public places	no	9 / 0 / 9
	Citizens' consultative initiative	to initiate a general suggestion or a formulated draft to adopt a law or another issue	citizens	consultative	proactive	>15 eligible citizens	>300'000 = 11.6% of total electorate	>50% of total electorate	>1/2 of participants (>25% of total electorate)	>300'000 = 11.6% of total electorate	3 months <sup>5</sup>	public places	no	0 / 0 / 0
Total Votes														20 / 4 / 14

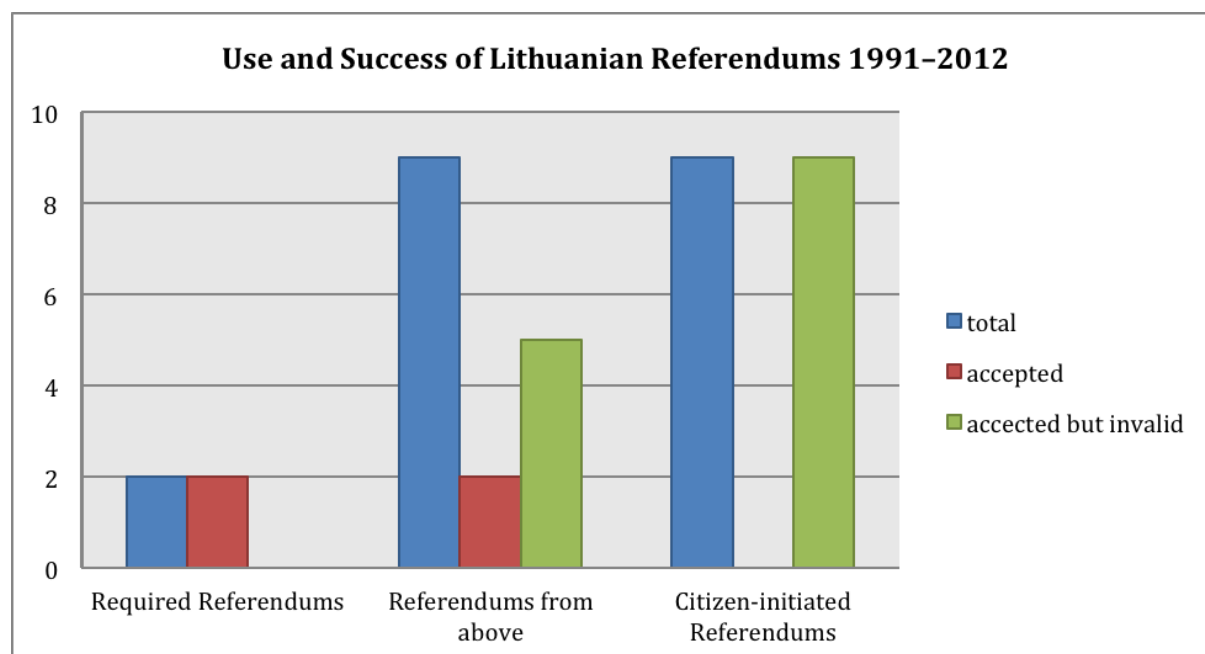
**Remarks**

- 1: The possibility of a referendum introduces the citizens as one additional veto player into the public legislative process. A veto player is an individual or collective actor whose agreement is needed for a change in the legislative status quo. If an existing or latent veto player controls **both** the framing of the proposal and the triggering of the referendum, other veto players lose their ability to veto outcomes, the number of veto players decreases and potential of policy change increases (HUG/TSEBELIS, 2002)
- 2:  $q / a / ai$  = quantity of referendums / approved / approved but invalid due to precise formal restrictions
- 3: There are around 2,588,400 eligible voters in Lithuania (2012).
- 4: The single-chamber parliament consists of 141 deputies (Art. 55 CLt).
5. If up to 0.5% of the signatures are lacking an additional 15-day time limit is set to eliminate these deficiencies (Art. 13 par. 2 LoR)
6. One of them refers to the approved referendum on independence, which was held on 9 February 1991.

## 5.2 Lithuanian direct democracy in practice

Among the Baltic States Lithuania is the leading country with regard to frequency of using direct democratic tools in national politics.. Since 1991 twenty referendums including the referendum on independence have been held (see *Table 3* and *Figure 3*). However, only four referendums succeeded in full and came into force. Others have either been rejected (2) or did not become legally binding due to lack of turnout and qualified approval (14)<sup>353</sup>.

**Figure 3:**



According to our conceptualisation, in Lithuania we can distinguish between nine different direct democratic tools divided into three direct democratic mechanisms. With regard to these three mechanisms of direct democracy, there were only two required referendums (1 mandatory constitutional referendum and 1 mandatory referendum on participation in International Organisations) in 20 years. They were both approved by the people and became legally binding. A major part (9) of the referendums that have been held in Lithuania belong to the category of referendums from above (five parliamentary constitutional plebiscites and four parliamentary plebiscites on other issues and laws). They have been framed and triggered by public authorities. Indeed, seven of nine top-down referendums have been approved. But, due to formal restrictions, such as turnout or approval quorum, five did not become legally binding. Only two referendums from above could overcome these two obstacles and succeeded in full, and two referendums were rejected by the people.

Besides required and top-down referendums, there were nine citizen-initiated referendums. All nine belong to citizens' initiatives on laws and other issues.

353 c2d database, [http://c2d.ch/votes.php?level=1&country=202&year=timeperiods&fromyear=1990&toyear=2013&speyear\[\]=2013&result=0&terms=&table=votes&sub=Submit\\_Query](http://c2d.ch/votes.php?level=1&country=202&year=timeperiods&fromyear=1990&toyear=2013&speyear[]=2013&result=0&terms=&table=votes&sub=Submit_Query) (accessed on 12.12.2012).

However, the launching was rather by political parties than by the people. A citizens' facultative referendum to refuse parliamentary decisions has not yet been carried out. Indeed, there were attempts, but they missed the necessary minimum number of signatures. As one can see, all nine referendums from below have been adopted by the citizens participating in the ballot, but due to high turnout or approval quorum they failed to come into force.

Besides these direct democratic tools that have been used in practise, it should be noted that some instruments have not been applied yet. It is not surprising since there was no mandatory referendum on the constitutional act, as foreseen by article 4, par. 1, sec. 4 of LoR<sup>354</sup>. And neither is it surprising if there was no citizens' consultative initiative. But one may expect that there were some citizens' facultative referendums to veto parliamentary resolutions or popular constitutional initiatives intending to alter the constitution. However, due to high collection obstacles many citizens failed to collect enough signatures to trigger such referendums.

With regard to subject matter, we can say that for the most part referendums have been used to resolve questions on state organisation, such as national identity or the political system. Another big part dealt with issues on economic policy and public finances. And some few referendums referred to foreign policy issues, such as EU accession or to issues on energy and the environment.

### **5.2.1 The referendum of 9 February 1991 on Lithuania's independence**

In 1940 the secret deal between STALIN and HITLER cleared the way for STALIN to annex the Baltic States. With regard to the illegality of this deal, as was the case for the Estonians and Latvians, also the Lithuanians subsequently achieved the right to self-determination and independence on reasonable terms. Lithuania declared that its sovereignty had continued to exist *de jure* despite the Soviet occupation. Before the declaration of independence, the Lithuanian Supreme Council (parliament) had enacted an interim constitution, a 'provisional Basic Law' that was to regulate the powers of the government until a new constitution had been written and approved by referendum<sup>355</sup>. According to article 3, the Supreme Council of Lithuania was entitled to frame and trigger a referendum. The parliamentary plebiscite (on other issues) was a sign of resistance against Gorbachev's initiated sovereignty referendums that aimed to preserve the Soviet Union and hold the country together<sup>356</sup>. Since the Baltic States did not want to co-operate with Gorbachev and remain part of the Soviet Union, they had scheduled their special 'opinion polls' on independency just before Gorbachev's referendum on the future of the Soviet State could take place in 17 March 1991<sup>357</sup>. The referendum on Lithuanian independence was not a real decision on independence since the act on the restoration of the Lithuanian state had already been passed by the Lithuanian Supreme Council on 11 March 1990<sup>358</sup>.

354 Art. 4, par. 1, sec. 4 LoR.

355 The Grip on Lithuania, The Economist [London, England], 21 April 1990, p. 13; MOLE, p. 93.

356 BRADY/KAPLAN p. 186-201.

357 Backdown, The Economist [London, England], 2 February 1991, p. 50; Thunderballot, The Economist [London, England], 16 February 1991, p. 54.

358 KRUPAVICIUS, Citizens' Initiatives, p. 135.



Around 85 percent of the citizens participated in the 'opinion poll' and around 93 percent of the participants (76 percent of total electorate) were in favour of Lithuania becoming an independent democratic republic<sup>359</sup>. Although the Lithuanian opinion poll on Lithuanian independence had no legal consequences, based on existing formal rules, its positive outcome left Gorbachev with even more problems than reforming the Soviet Union politically and economically. And after the failed Moscow coup in August 1991, the outcome of the referendum was confirmed not only in Lithuania, but also in Estonia and Latvia<sup>360</sup>. Thus, the referendum outcome enabled Lithuanian authorities to enhance the republic's legal sovereignty. To secure its position against the Soviet Union, the Lithuanian parliament further added a clause to its draft constitution saying that independence can be overturned only by another referendum, not by parliament<sup>361</sup>.

### **5.2.2 The referendum of 23 May 1992 on the restoration of the presidential institution**

After Lithuania broke free from the Soviet Union, its fledgling democratic institutions became paralysed by growing divisions and infighting between the right-wing conservative 'Sajudis' – the former Lithuanian Restructuring Movement – and the opposition block of the formerly communist Lithuanian Democratic Labour Party (LDDP) in the parliament, and between parliament and the government. Both political groups had agreed on the need of a new constitution, but disagreed about the form of the political structure the system should take<sup>362</sup>. To break the political gridlock, the 'Sajudis' initiated a parliamentary constitutional plebiscite to establish a strong presidential system. The movement's leader VYTAUSTAS LANDSBERGIS, who was the chairman of the Supreme Council, was at the same time *de facto* the head of state. This was formally possible since the 'Provisional Basic Law' had retained such an institutional structure from the Soviet era. LANDSBERGIS hoped that the plebiscite would expand and legitimise his own authority by giving the chairman of the parliament new sweeping powers as the republic's first chief executive. A creation of a strong, American-style presidency with powers to act independently of the parliament was the aim in empowering the president with the right to dissolve the government and with the right of veto<sup>363</sup>.

According to the Referendum Law of 1989, for the amendment of the constitution at least 50 percent of the eligible voters needed to participate. Nearly 70 percent of the voters (41 percent of the whole electorate) who had cast ballots voted yes. However, the referendum failed since too few voters had turned out (59 percent of total electorate), thus not achieving the approval quorum of 50 percent of the

359 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=37911](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=37911) (accessed on 12.12.2012)

360 The Ex-Communists Ahead in Lithuanian Elections, The New York Times, 27 October 1992, p. 10.

361 Thunderballot, The Economist [London, England], 16 February 1991, p. 55; Art. 2 of the Constitutional Law of the Republic of Lithuania on the State of Lithuania of February 11, 1991.

362 MOLE, p. 93 f.

363 MØLLER, p. 284.

total electorate<sup>364</sup>. The low turnout was indeed not a result of chance, but rather an outcome from the tactical behaviour of the rest of Lithuanian parliamentarians, who were against a strong presidential system. Knowing that the other parliamentary plebiscite, namely the referendum on the withdrawal of Soviet troops (see Chapter V-B-3 below), would be supported by a large part of the Lithuanian citizens, they separated the two referenda dates. And the tactics of lowering the first referendum's turnout succeeded, with many voters avoiding the polls<sup>365</sup>.

### **5.2.3 The referendum of 14 June 1992 on the withdrawal of Soviet troops**

Only one month after the referendum on the restoration of the presidential institution, Lithuanian voters faced another referendum. This time Lithuanians were asked to go to the polls and to vote on whether they want Russian troops to pull out of Lithuania by the end of 1992. All three Baltic States had wrested back their independence after the collapse of the coup in Moscow. But this independence was precarious so long as more than 100,000 Russian troops remained on their soil, with 30,000 thereof in Lithuania. And to have Russia withdraw its troops, Lithuanians endorsed that position in a referendum<sup>366</sup>. Indeed, by early March 1992 Russian troops had slowly begun to leave Lithuania. But, VYTAUSTAS LANDSBERGIS and his government were still anxious that Russia would delay the withdrawal of its troops should, in the coming general elections that autumn, ALGIRDAS BRAZAUSKAS' LDDP come to power. It was thought that BRAZAUSKAS, as former First Secretary of the Communist Party of Lithuania (CLP) during the Soviet period, might not interpret the Russian troops as an occupying force and hence be more conciliatory towards Russia. To avoid such a potential risk, the government authorities triggered the referendum on the complete and unconditional withdrawal of the troops, which was also supported by the other parties in the Supreme Council. The parliamentary plebiscite (on other issues) further demanded that Lithuania be compensated for damages resulting from the Soviet occupation. As with the referendum on independence, also this referendum served to strengthen popular resistance in Lithuania and reaffirm the political course already set<sup>367</sup>.

Around 76 percent of 2.5 million eligible voters turned out and an overwhelming 91 percent of these voted in favour of the referendum, which is indeed 69 percent of the total electorate and thus over 50 percent of the eligible voters needed for an approval. The popular endorsement had legitimised the government's claim, which Russia could no longer ignore. It agreed to a withdrawal, however, it maintained that a complete withdrawal from the Baltic

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364 Leader Fails to Win Vote, *The New York Times*, 25 May 1992, p. 5; The Ex-Communists Ahead in Lithuanian Elections, *The New York Times*, 27 October 1992, p. 10; BRADY/KAPLAN, p. 203.

365 I am very grateful for Mr. Prof. LIUDAS MAZYLIŠ' helpful notes, Faculty of Political Sciences and Diplomacy, Vytautas Magnus University Lithuania.

366 Why are the Baltics Still Occupied, *The New York Times*, 15 June 1992, p. 18; Lithuania Backs Quick Pullout of Ex-Soviets, *The New York Times*, 16 June 1992, p. 11.

367 KRUPAVICIUS/ZVALIAUSKAS, p. 111; MOLE, p. 120-122.

States would take up to five years due to housing shortages. The last troops finally left Lithuania on 31 August 1993<sup>368</sup>.

#### **5.2.4 The referendum of 25 October 1992 on the constitution**

Together with the first round of parliamentary elections to replace the Supreme Council of Lithuania by a new parliament (Seimas), Lithuanians were also asked to vote on their new constitution (mandatory constitutional referendum). The constitution was indeed a compromise between LDDP and Sajudis after LANDSBERGIS'S defeat in the presidential referendum five months before. Both parties agreed on a semi-presidential structure, wherein both the president and parliament should be elected directly. Thus, a sophisticated system of checks and balances was put in place. It should ensure that the president's authority was matched by parliamentary countervailing powers<sup>369</sup>.

The necessary quorum of 50 percent was achieved with a participation rate of 75 percent. Around 56 percent of the whole electorate approved the mandatory referendum on the new constitution. By adopting the referendum Lithuanians had also approved their right to the popular initiative and the right to mandatory referendums for specific constitutional provisions<sup>370</sup>.

And, as LANDSBERGIS had feared, the parliamentary elections were won by ALGIRDAS BRAZAUSKAS'S (former communist) Lithuanian Democratic Labour Party, LDDP (73 of 141 seats), the challenger of the 'Sajudis', which merely gained 37 seats.

#### **5.2.5 The referendum of 27 August 1994 on the law revoking privatisation I-VIII**

On 27 August 1994 Lithuanian citizens had to decide on a referendum on economic measures regarding the privatisation (illegal privatisation, compensation of banking savings and distorted justice). For legal reasons the referendum on the law revoking privatisation was divided into eight parts: I. Law on illegal privatisations, devalued accounts, shares, and the failure to respect protective legislation, II. Law on illegal privatisation, III. Abolition of the consequences of illegal privatisation and future privatisations of State property, IV. Re-establishment and reimbursement of devalued private bank accounts, V. Recording the value of long-term capital investments, VI. Restoring the value of devalued assets belonging to the State, VII. Unification and transparency in protective legislation, VIII. Implementing the law on illegal privatisations, accounts, shares and the failure to respect protective legislation.

The referendum was initiated as a citizens' initiative by VYTAUTAS LANDSBERGIS'S emerging party 'Fatherland Union', an offshoot of 'Sajudis', which had lost the last parliamentary elections. The party's proposal intended to change the economic policy by stopping privatisation. But in fact, it was also an attempt to advance its campaign for the mobilisation of voters, although many of these

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368 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=37926](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=37926) (accessed on 12.12.2012).

369 MOLE, p. 94.

370 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=57236](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=57236) (accessed on 12.12.2012).

eight proposals were impossible to implement<sup>371</sup>. The 'Fatherland Union' was able to collect more than 560,000 signatures over the short time of two months. The proposed law was to set a new political and economical course of the country by preventing and fighting economic crime. A further aim was to enable Lithuanians who had suffered in the new market economy after re-independence to benefit.

Besides the government, also other oppositional parties such as the Social Democrats and Liberals encouraged voters to reject all or some of the proposals to avoid the bankruptcy of the nation. The World Bank and International Monetary Found (IMF) had said that a realisation of LANDSBERGIS's measures would cause costs of 2 billion US Dollars, a huge amount and enough to unhinge the national household and to thrust Lithuania's weak economy into chaos<sup>372</sup>.

On referendum day only 37 percent of the eligible voters had cast ballots, but according to the LoR, more than half of the country's registered voters needed to take part for the referendum to be valid. 84 percent of those who participated in the ballot voted yes. But, since the turnout quorum could not be reached in any of these eight proposals, the referendum on the law on economic measures was deemed invalid and thus failed<sup>373</sup>.

### **5.2.6 The referendum of 20 October 1996 on the compensation for lost assets prior to 1990**

After the defeat in eight referendums, the 'Fatherland Union' (Lithuanian Conservatives) triggered another citizens' initiative (a citizens' initiative on laws and other issues) to restore the savings and pensions that were used up by the Soviet government before 1990. Over 300,000 valid signatures were collected in favour of the draft. After the validation of the signatures by the CECLt, the final act of the proponents, along with the citizens' valid signatures and the committee's conclusions, were transmitted to the parliament for its deliberation. The parliament declared the initiative valid and submitted it to a popular vote on the same date as the first round of parliamentary elections.

Also here, a turnout and approval quorum of 50 percent of eligible voters was formally necessary for such a referendum on a law. Indeed, around 52 percent of the eligible voters were not deterred by the turnout obstacle. But it was not enough to overcome the approval quorum. Although the majority of the voters had approved the referendum, it was only 38 percent of the total electorate and, at that time, this was not sufficient to validate the referendum<sup>374</sup>.

371 MAZYLIS LIUDAS/JURGELIONYTE AUSRINE, The Lithuanian Referendum on Extending the Working of the Ignalina Nuclear Power Station: The Rationality of Actors within (Un-)changing Structures, *Baltic Journal of Law & Politics* 5(1)/2012, p. 133 (cit. MAZYLIS/JURGELIONYTE); MØLLER, p. 287.

372 Economic Referendum in Lithuania Fails, *The New York Times*, 28 August 1994, p. 16; Kein Privatisierungsstopp in Litauen. Fiasko für Rechtsopposition, *Neue Zürcher Zeitung*, 29 August 1994, p. 9.

373 see any single result for these 8 referendums on c2d database, [http://www.c2d.ch/votes.php?level=1&country=202&year=timeperiods&fromyear=1990&toyear=2013&speyear\[\]=2013&result=0&terms=&table=votes&sub=Submit\\_Query](http://www.c2d.ch/votes.php?level=1&country=202&year=timeperiods&fromyear=1990&toyear=2013&speyear[]=2013&result=0&terms=&table=votes&sub=Submit_Query) (accessed on 13.12.2012).

374 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=37843](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=37843) (accessed on 13.12. 2012).

### **5.2.7 The referendum of 20 October 1996 on parliamentary elections on the second Sunday of April every four years**

On the same day as the referendum on the compensation for lost assets prior to 1990, there were three further questions that were put to a popular vote. All three referendums dealt with constitutional provisions (Art. 55, Art. 57 and Art. 131 CLt), such as state organisation, the political system and the state budget. But, these did not belong to the constitutional provisions of chapters I and XIV, for which, in the case of any alterations, a mandatory referendum had to be triggered automatically<sup>375</sup>.

In contrast to the referendum on the compensation for lost assets, which was asked and triggered from 'below', these three proposals were parliamentary constitutional plebiscites that had been framed and triggered by the governing party, the Lithuanian Democratic Labour Party (LDDP)<sup>376</sup>. Thus, a collection of signatures was not necessary. The proposals to be submitted to a popular vote had been adopted in parliament by the governing LDDP, with a total number of 73 seats. At that time not less than half of the members of parliament (141:2) were necessary to trigger a parliamentary constitutional plebiscite. LDDP's referendums were rather a direct response to the 'Fatherland Union', since at that time the LDDP was in decline and, hence, afraid to lose the elections<sup>377</sup>. It was a desperate effort of the LDDP to mobilise its electorate<sup>378</sup>.

The first measure of these three questions aimed to alter article 57 of the constitution. The parliament was to be elected every four years on the second Sunday of April, instead of in two rounds on varying dates. 52 percent of the eligible voters participated in ballot, which was higher than the required turnout minimum of 50 percent. And around 65 percent of those who take part in the ballot said yes to governmental proposal. However, once again the referendum failed since only 33 instead of the required 50 percent of the total electorate favoured this policy change<sup>379</sup>.

### **5.2.8 The referendum of 20 October 1996 on the reduction of parliamentary seats from 141 to 111**

In addition to the first parliamentary constitutional plebiscite on parliament's term of four years, as outlined above, the governing LDDP also intended to reduce parliament's seats from 141 to 111. On 19 September 1996 it ratified the proposal by 62 to 25 and with 14 abstentions, and submitted it to a popular vote. The proposal in favour of the reduction of parliamentary seats was supported by 65 percent of the participants. And also here the mandatory turnout quorum was reached by 52 percent of all eligible voters, but due to the low approval quota of

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375 see Art. 148, sec. 2 CLt.

376 KRUPAVICIUS, Citizens' Initiatives, p. 143.

377 MØLLER, p. 287.

378 MAZYLIS/JURGELIONYTE, p. 133.

379 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=37842](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=37842) (accessed on 13.12.2012).

33 percent of the total electorate, this reform failed to come into force, too<sup>380</sup>. Today, Lithuanian parliament still consists of 141 representatives.

### **5.2.9 The referendum of 20 October 1996 on social spending**

The third parliamentary reform that was submitted to a vote aimed to alter the constitution on social spending (article 131 CLt). This parliamentary constitutional plebiscite required that the annual state budget must be deliberated by the parliament and be adopted each year by legislative decree. The parliament further should be able to decide on new expenditures if it specifies the source of capital. The proposal additionally foresaw that at least half of the revenue of the public budget should be allocated to social security, medicine, education, science, culture and other social needs of the citizens. Over 50 percent of all voters had turned out, and 63 percent of these participants voted in favour of the question. But once again, at the time, this quota was not enough to reach the mandatory approval quorum of 50 percent of the total electorate<sup>381</sup>. If this and another three votes of 20 October 1996 had been held after 2002, all four referendums would have been valid. Because, due to the new LoR, binding referendums on laws or other issues, or constitutional referendums that refer to other provisions than those of chapter I and XIV of the constitution, can be deemed as approved if not less than one-third of the total electorate approves them<sup>382</sup>.

#### **5.2.10 The referendum of 10 November 1996 on the purchase of agricultural land by certain legal bodies**

The referendum on the purchase of agricultural land by certain legal bodies that was held simultaneously with the second round of parliamentary elections dealt with an amendment to the article 47 of the constitution. The issue set to popular vote intended to give foreign corporations the right to acquire agricultural land in Lithuania. In addition to other three referendums, the LDDP was also the proponent of this referendum. A collection of signatures was not necessary since the triggering of the referendum in favour of the proposal was supported by the governing majority. At that time not less than half of the parliament's members (141:2) were required to trigger a parliamentary constitutional plebiscite.

The Law on Referendum required a turnout quorum of at least 50 percent of the eligible electorate and the same quota for an approval. But, both requirements failed since participation was much lower. Only around 40 percent of the electorate went to the polls and only 43 percent of them (17 percent of the total electorate) voted in favour of LDDP's proposal. The governing LDDP, insofar, lost all four plebiscites that it had launched before the elections in 1996<sup>383</sup>. But the loss was not only limited to these referendums; the LDDP, controlling the Seimas

380 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=37936](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=37936) (accessed on 13.12.2012).

381 c2d database, [http://www.c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=57237](http://www.c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=57237) (accessed on 13.12.2012).

382 Art. 7, par. 4 LoR.

383 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=37796](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=37796) (accessed on 13.12.2012).



since April 1992, had also lost the parliamentary elections on the same day. Its number of seats fell from 73 to 12, while the 'Fatherland Union' could celebrate its comeback by winning 70 of 141 seats.

Six years after the referendum the right of foreigners to purchase agricultural land was approved by a vote of 90 to 17, with six abstentions by the parliament. The amendment permitted physical and legal entities from EU and NATO countries to purchase farmland in Lithuania after the seven-year transition period stipulated in the Lithuanian EU accession treaty<sup>384</sup>.

### **5.2.11 The referendum of 10 and 11 May 2003 on the accession to the European Union**

The EU Accession Treaty was signed in Athens on 16 April 2003. Some months before, on 24 February 2003, leaders of all main parliamentary factions had decided to establish a coordinating council to organise a referendum on Lithuania's future membership in the EU. The decision on the popular vote was supported by 105 of 141 members of parliament. Three days later the parliament passed a decision to hold a mandatory constitutional referendum on the country's entry into the EU in 2004 on 10–11 May 2003<sup>385</sup>. It was a special version of mandatory constitutional referendums (mandatory referendum on participation in international organisations), as the newly adopted LoR (June 2002) required. According to par. 1, sec. 5 of article 4 of the LoR, a mandatory popular vote had to be held, should Lithuania participate in international organisations and 'should this participation be linked with the partial transfer of the scope of competences of government bodies to the institutions of international organisations and the jurisdictions thereof'.

A positive decision on such a mandatory referendum normally required more than a 50 percent turnout and at least one third of the eligible voters to be in favour<sup>386</sup>. Although the LoR 2002 was designed to facilitate a positive result by being less restrictive than the LoR 1989, it was still restrictive, especially when compared with the corresponding laws in other EU accession candidate countries. On 27 February, to avoid a negative outcome on the EU accession referendum, the parliament introduced two amendments to the LoR. Firstly, it abolished the requirement of a qualified majority of one third of the electorate for a positive decision. But, the required 50 percent turnout still appeared to be a major problem. Therefore, various measures were included in the legislation to facilitate a higher turnout, without changing the turnout quorum itself. In all previous referenda, voting was allowed only for one day. During the EU accession, referendum voting was extended to two days. And polls were to stay open from 6 am to 10 pm, instead of 7 am to 8 pm. In addition, the parliament decided to extend postal voting to 11 instead of 5 days prior to a referendum. Besides these formal changes, the political establishment had also conducted a well-organised campaign with intensive and innovative information and agitation to mobilise the voters<sup>387</sup>.

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384 KRUPAVICIUS ALGIS, Lithuania, *European Journal of Political Research* 43/2004, p. 1062.

385 KRUPAVICIUS ALGIS, Lithuania, *European Journal of Political Research* 43/2004, p. 1063.

386 Art. 7, par. 4 LoR.

387 MAZYLIŠ/JURGELIONYTE, p. 3, p. 9.



On the ballot, around 63 of the total electorate went to the polls and an overwhelming 91 percent of the voters (57 percent of the total electorate) voted in favour of an accession to the EU<sup>388</sup>. A record level of support that would have been valid under all three versions of the LoR: 1989, 2002 and 2003. One can assume the high level was not only result of formal changes and well-organised campaigns but also the wish of Lithuanians to be part of the West, and not of the East<sup>389</sup>.

Indeed, it is to be welcomed that direct democracy becomes more citizen-friendly when such facilitation of procedures is enacted by the parliament. But, it is important to note that all changes were promoted by the political elites since they expected positive effects resulting from an accession to the EU. Nevertheless, one should take into account that it is also the same political elite that would reject any other reforms, such as lowering the amount of signatures for citizens' initiatives or extending the collection time that would constrain the elite's capacity to act. So, to avoid any lowering of the turnout, the parliament took other little measures to make a EU accession possible. It should be noted that there it is still a risk of misuse as long as some important provisions on direct democratic procedures are framed at a level below the constitution, where no qualified majorities are required for their alteration. And that such a misuse can occur is made possible by the Lithuanian parliament itself. Today, all these changes to the LoR that had been enacted have been reset. The euphoria on citizen-friendly procedures lasted for only a short time.

#### **5.2.12 The consultative referendum of 12 October 2008 on the service extension for the nuclear power plant 'Ignalina'**

The Ignalina nuclear power plant was in operation since 1983. It was built according to a similar construction design as Chernobyl. Despite the fact that the plant had another reactor type and was upgraded several times, for the EU it was still too risky and, hence, had to be closed down. The decommissioning of the Ignalina nuclear power plant in 2009 was also one condition to be part of the EU, as specified in Lithuania's Treaty of Accession to the EU which was signed in Spring 2003.

With the global rise in energy prices, a new wave of public discussion to renegotiate a possible extension for keeping the Ignalina plant in operation started<sup>390</sup>. Also, to avoid a complete dependency on Russian gas, even President VALDAS ADAMKUS believed that Lithuania might be able to convince the EU of the need to extend the lifespan of the Ignalina nuclear power plant. Although he was initially against such a referendum, he changed his opinion and asked Lithuanians to voice their support for remaining a nuclear powered state and thus to secure extra time for the construction of a new plant.

Initially, the non-parliamentary Lithuanian Social Democratic Union actively promoted an idea to pass special legislation to keep the Ignalina nuclear power

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388 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=37864](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=37864) (accessed on 13.12.2012).

389 MAZYLIS/UNIKAITE, p. 10.

390 Steht Litauen vor einem «Energie-Infarkt»?., Neue Zürcher Zeitung, 19 November 2008, p. 7.

plant open and also to hold a national mandatory referendum on extending Ignalina's operation together with the parliamentary elections in October 2008<sup>391</sup>. From 7 March to 7 June 2008 signatures for a corresponding citizen's initiative were collected. However, only 47,000, instead of the required 300,000 signatures, were gathered in favour of the service extension. Indeed, the popular initiative failed<sup>392</sup>, but not the idea to put the issue to a popular vote. In 2008 some oppositional parties, among them the Liberal Movement, decided to trigger a referendum that should be held at the same time as the October 12<sup>th</sup> parliamentary elections. In contrast to the failed citizens' initiative, which was binding, parliament's proposal (parliamentary plebiscite on other issues and laws) should be consultative. To note, triggering was a tactical choice to increase voter mobilisation during the oncoming general elections that was set for the same date as the referendum, on 12 October 2008<sup>393</sup>.

As for binding referendums, the LoR requires also for consultative referendums a turnout threshold of at least half of all eligible voters<sup>394</sup>. More than 48 percent of all the electorate took part in the referendum and 91 percent of those who voted in the referendum were in favour of prolonging the Ignalina nuclear power plant's lifespan. But, 48 percent of the eligible voters who had participated were not enough to validate the referendum and, thus, it failed<sup>395</sup>. Subsequently, on 31 December 2009 the Ignalina nuclear power plant was closed down as required by Lithuania's entry treaty to the EU. Thereafter, due to the lack of relatively cheap energy that Ignalina had generated, Lithuania became largely dependent on imported electrical energy<sup>396</sup> and, consequently, particularly vulnerable from Russia.

### 5.2.13 The consultative referendum of 14 October 2012 on building of a new nuclear power plant 'Visaginas'

Before the closure of the Ignalina nuclear power plant the parliament tried to find new ways to diversify its energy sources, enhance energy security and also to become less dependent on gas from Russia. One option was to build a new nuclear power plant at the same location as the old Ignalina nuclear power plant. The new nuclear power plant, 'Visaginas', was to be a regional project – with Estonia and Latvia – and to replace the old one, which was closed down at the price of joining the EU. Most importantly, it was to make Lithuania less dependent on Russia, which was not only delivering gas but also electricity to Lithuania<sup>397</sup>.

391 KRUPAVICIUS ALGIS, Lithuania, European Journal of Political Research 47/2008, p. 1055.

392 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=57764](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=57764) (accessed on 13.12.2012).

393 KRUPAVICIUS ALGIS, Lithuania, European Journal of Political Research 48/2009, p. 1032 f.

394 Art. 8, par. 1 LoR.

395 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=57764](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=57764) (accessed on 13.12.2012); Litauen vor einem Regierungswechsel, Neue Zürcher Zeitung, 14 October 2008, p. 3.

396 KRUPAVICIUS ALGIS, Lithuania, European Journal of Political Research 49/2010, p. 1072 f.

397 Steht Litauen vor einem «Energie-Infarkt»? , Neue Zürcher Zeitung, 19 November 2008, p. 7; Litauen lässt sich seine Energie etwas kosten, Neue Zürcher Zeitung, 18 October 2012, p. 21; Lithuania's Final Sprint, The Economist [online], <http://www.economist.com/blogs/easternapproaches/2012/09/lithuania> (accessed on 13.12.2012).

The relevant law on building a new atomic power plant had already been in force since 2007, but it was controversially discussed by society and finally recalled by the new parliamentary majority<sup>398</sup>.

Due to discussions in the society, the Green Party and some environmental associations started to collect signatures for a popular vote to veto the plans of the new power plant. However, they failed to collect the minimum number of signatures<sup>399</sup>. Although the citizens failed to bring the issue to the popular arena, on July 2012 the parliament decided by a vote of 62-39 to hold a consultative referendum on the construction of the new plant (parliamentary plebiscite on other issues and laws). Once again the referendum was set on the same day as the elections to the parliament. The governing parties 'Fatherland Union and Lithuanian Christian Democrats' that were in favour of the new atomic power station had opposed the proposal by accusing the opposition parties of seeking to make a political profit out of the issue prior to the elections.

On ballot day, 52 percent of all eligible voters went to the polls, and the required turnout quorum of 50 percent of the total electorate was reached. But around 65 percent of the voters and, thus, 32 percent of the total electorate said no to the government's plans of building a new nuclear plant<sup>400</sup>. Due its consultative character, however, the parliament is not obliged to follow the people's opposite decision.

The Social Democrats, the winners of the parliamentary elections 2012 and initially sceptical of a new nuclear power plant, have made less of an effort to uphold the voters' decision these days. Indeed, for the new government, avoiding any energy dependency from abroad, namely from Russia, seems to have more priority than a total moratorium of a possible new nuclear power plant.

#### **5.2.14 Referendums without sufficient signatures**

There is no systematic information available for citizen-initiated referendums from before 1994 because until then a directly responsible institution, such as the CECLt, did not exist. From 1994 until 2010, a total of 16 proposals were triggered by the citizens, but they all failed to collect the required 300,000 signatures<sup>401</sup>. For instance, in 1995 a group collected only 200,000 signatures for their initiative on an election law. An interesting case refers to a citizens' initiative of the Lithuanian National Progress Party on soil policy. It intended to allow foreigners and international organisations to own Lithuanian land. The proponents narrowly missed collecting 300,000 signatures in favour of their proposals. However, 65,000 signatures were stolen from the headquarters of the referendum organisers. In addition, the initiative committee met with the intensive opposition of other political parties and from 600 individuals who had started to collect

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398 MAZYLIŠ/JURGELIONYTE, p. 120.

399 This example proves that Lithuanians are also entitled to use their right of referendum according to article 9 of the constitution to veto parliamentary decision in favour of the status quo.

400 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=132717](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=132717) (accessed on 14.12.2012); Machtwechsel in Litauen, Neue Zürcher Zeitung, 16 October 2012, p. 5.

401 KRUPAVICIUS, Citizens' Initiatives, p. 140.

signatures, only around 30 were left, since they were openly terrorised and threatened.

One year later another initiative on the privatisation of infrastructure of state-owned strategic companies by the Lithuanian Social Democrats gathered only 180,000 signatures. And also the initiative of a group of people to reform parliamentary elections failed to gather enough signatures in 1999<sup>402</sup>.

Also, the initiation of a referendum on extending the running of the Ignalina nuclear power station by non-parliamentary Lithuanian Social Democratic, as stated above, failed. The same initiative group had also tried to collect signatures for a constitutional amendment enabling citizens to dissolve the parliament by a referendum, but once again without success<sup>403</sup>. In 2010 the New Union (Social Liberals) started to collect signatures to organise a referendum forcing pre-term elections to the parliament, but they fell short of the 300,000 required signatures, by 50,000<sup>404</sup>. After the parliamentary agreement on the construction of a new nuclear power station, a citizens' facultative referendum to stop the new construction plans was initiated in 2012, but, as mentioned above, the proponents of the referendum failed to gather the necessary minimum amount of signatures<sup>405</sup>.

### **5.3 Explanations for the Lithuanian practice**

#### **5.3.1 Legal constraints**

One of the most influential factors that determine the use and outcome of Lithuanian referendums stems from the institutional settings that are stipulated by the constitution and the LoR. The Lithuanian law on referenda is after twenty years experience still not favourable enough to the development of direct democracy. At first, with regard to citizen-initiated referendums, it is the formal obstacle of collection time and number of signatures that make the use of such democratic tools very difficult. Only three months for 300'000 signatures, representing about 11.5 percent of the electorate, is not an easy initial position for the common people to launch a popular initiative. In contrast to the citizens, mainly large political parties such as the 'Fatherland Union' or the LDDP succeeded in collecting signatures for a particular issue or to trigger a referendum through the parliament<sup>406</sup>.

Decisive with regard to the outcome of referendums are obstacles for the turnout and approval. The high turnout quorum of 50 percent of all eligible voters for all kinds of referendums and the high threshold of yes votes that is necessary (from one-fourth to three-fourth) to pass a decision by referendum obstructs the will of the people. For Lithuanians it might be understandable that a vote by three-quarters of citizens is needed to amend the article of the constitution, but is an absolute majority as two-half of the whole electorate really needed for other issues too<sup>407</sup>? Regarding the success of twenty referendums that have been held

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402 KRUPAVICIUS/ZVALIAUSKAS, p. 116 f.

403 MAZYLIS/JURGELIONYTE, p. 121 f.

404 KRUPAVICIUS ALGIS, Lithuania, *European Journal of Political Research* 50/2011, p. 1055.

405 MAZYLIS/JURGELIONYTE p. 120.

406 see also KRUPAVICIUS, *Citizens' Initiatives*, p. 139.

407 DAGYS REMANTAS, *Participatory Democracy in the Baltic States, before and after the Communist Regime*, in: COUNCIL OF EUROPE (ed.): *Seminar on Participatory Democracy*

in Lithuania since 1990 this question can be answered in the negative. Fourteen of twenty referendums that were supported by the majority of voters had to be invalidated since they failed to fulfil formal restrictions on turnout or approval.

Due consideration must be given to the provisions that regulate the turnout and approval quorums. It is surprising that these are framed at statutory level and not in the constitution. This implies that they can be changed more easily, since no qualified majority is needed for an alteration. It is possible that the parliament tend to impede the direct legislation if results of referendums do not serve their interest.

It might be that framers of the constitution wanted to consolidate the country after the re-independence by enacting high obstacles for policy change through citizens. But, nowadays fewer hurdles would be helpful, in strengthening civil society by encouraging a participatory culture and promoting the people's participation in referendums. Otherwise, any further hurdle is a source of distrust towards these direct democratic institutions that rather undermine beliefs in the possibilities of the people to influence politics.

### **5.3.2 Informal constraints**

Besides the institutional framework, there are also informal procedures defining the use and outcome of popular votes. In many cases it is caused by the tactical manoeuvres of the Lithuanian elites themselves. One of the most used tactics is opposing a referendum. No chance of success a referendum can have if the opponents encourage electors to abstain. Another strategy refers to the ballot day. It is not surprising that referendums have often been held simultaneously with parliamentary elections. They became a complementary tool to the most important campaigns in order to mobilize the party electorate. They were often an effort by some political parties to mobilise their electorate<sup>408</sup>. To avoid the mix-up of party-politics and issue-politics, a referendum should not be held on the same day as general elections to the parliament.

Merely in few cases have referendums (referendum on independence, referendum on withdrawal of the Soviet troops, referendum on the accession to the EU) been used to solve domestic political deadlocks or to consolidate Lithuania's statehood. In other cases referendums have mostly been initiated for political mobilisation of the supporters of one party or another. They became an instrument of party politics<sup>409</sup>. And the role of political parties in the triggering of referendums is still prevalent in Lithuania. According to LUISE PAPE MØLLER, it is the Lithuanian polarised party system that gave rise to party incentives framing and triggering referendums. She notes that a high degree of polarisation between the parties makes it difficult to reach an agreement through negotiation, and consequently parties would rather trigger referendums to reach their goals, by putting pressure on the other political wing<sup>410</sup>. As the authors ALGIS KRUPAVICIUS and GIEDRIUS ZVALIAUSKAS correctly note, no single successful referendum has been implemented without the active role of political parties. Twenty referendums were

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in Central and Eastern Europe Today: Challenges and Perspectives (Vilnius 1997), p. 10.

408 MAZYLIS/JURGELIONYTE, p. 119, p. 132.

409 KRUPAVICIUS/ZVALIAUSKAS, p. 111 f.; KRUPAVICIUS, Citizens' Initiatives, p. 149.

410 MØLLER, p 282, p. 284-289.

held in Lithuania between 1991 and 2012 and none of them was in effect citizen-initiated. They were framed and triggered by political parties and mainly through the parliamentary way. These facts do not confirm the conventional notion that the referendum is an instrument of policy-making which allows citizens to take political decisions directly and over the heads of their representatives<sup>411</sup>. Until now Lithuanian direct democracy could not fulfil its function of expressing popular sovereignty and political equality. It did not bring new decisions on which political elites would disagree. In some extent this outcome can be explained by the lack of practice on the part of Lithuanian civil society. However, it should also be noted that framing and triggering a referendum and reaching a positive outcome of it is costly to undertake, and not every citizen can afford it.

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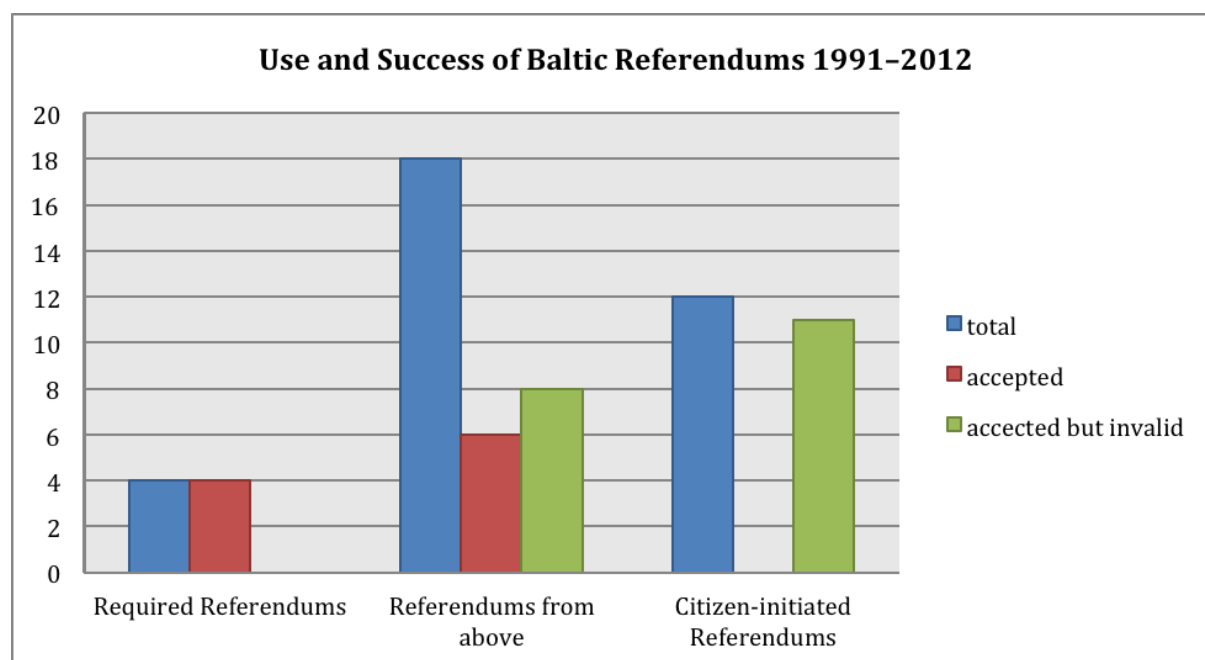
411 KRUPAVICIUS/ZVALIAUSKAS, p. 123.

## 6 The quality of direct democracy in the Baltics

### 6.1 A comparison of use and success of Baltic referendums

To illustrate the use and performance of direct democracy in the Baltic States, all 34 referendums held between 1991 and 2012 have been put into one figure (see *Figure 4* and also *Table 4*). A timeframe of about twenty years is a solid period to make a judgement about the practical value of Baltic popular rights. As one can note, within two decades there were only four required referendums. Most referendums (18) held in the Baltics were triggered from above – by the public authorities.

**Figure 4**



Despite the large number of top-down referendums, it should be noted that authorities' referendums in the Baltics were almost never used to empower (in the sense of extending the term, altering the balance between the government/president and parliament) governing majorities or the president, as is the case in less democratic societies (e.g. Belarus)<sup>412</sup>. Baltic top-down referendums were rather used strategically for partisan purposes, in order to strengthen the parties' public image before parliamentary elections. Within twenty years there was one referendum that might be considered critical, namely the Lithuanian failed plebiscite on the restoration of the presidential institution (see *Chapter V-B-2*). Indeed, there are three main reasons that explain the absence of empowering referendums. As previously stated, at first it is the criteria of a controlling feature of a referendum. In the sense of checks and balances, referendums from above are mainly framed and triggered by different

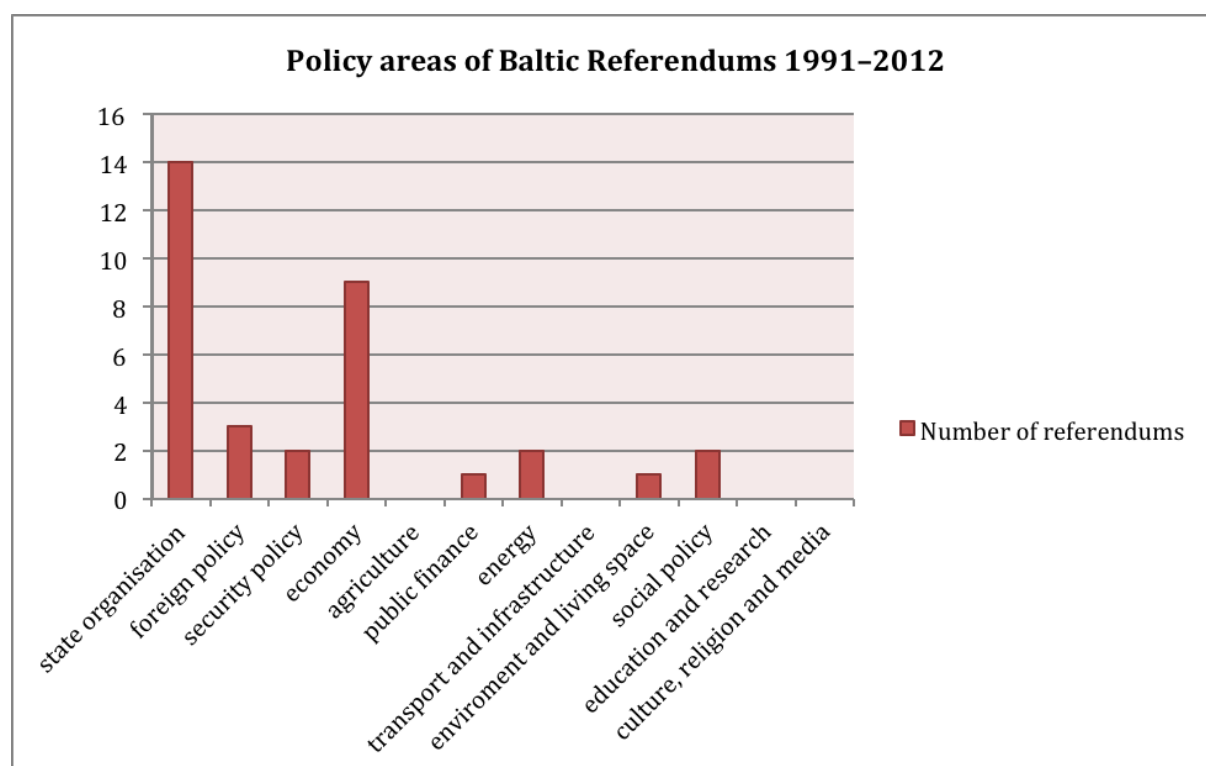
412 c2d database, [http://c2d.ch/detailed\\_display.php?lname=votes&table=votes&page=1&parent\\_id=&sublinkname=results&id=39265](http://c2d.ch/detailed_display.php?lname=votes&table=votes&page=1&parent_id=&sublinkname=results&id=39265) (accessed on 20.12.2012).



political actors, or they depend on a joint action<sup>413</sup>. And secondly, as in citizen-initiated referendums, further procedural settings, such as restriction on subject matter (Latvian presidential plebiscite only for recalling the parliament) or turnout and approval quorums, diminish the effect of referendums from above, too. A further reason for the absence of empowering referendums results from the party system (e.g. Estonia and Latvia's volatile multi-party system, Lithuania's polarised party system) in the Baltic republics. Volatile and polarised party systems make it difficult to reach agreements on such critical resolutions.

Citizen-initiated referendums are the second largest group of referendums held in the Baltics, but in all twelve cases political parties played a prominent role in the triggering of citizen-initiated referendums. As with referendums from above, citizen-initiated referendums were also a strategic tool to by-pass the parliament in order to get eventually the necessary popular support. But, more than the required popular support for a specific issue, the citizens' initiatives were also an important tool to promote party campaigns, especially by holding them on the same day as the elections.

**Figure 5**



With regard to the performance, required referendums were the most efficient referendums since all four succeeded in full. Less formal effect (one-third) has been achieved in referendums from above and no formal success at all has been achieved through citizen-initiated referendums. Indeed, as illustrated above, almost all (11 of 12) citizen-initiated referendums have been adopted by the

413 The Latvian presidential plebiscite on recalling the parliament is framed and triggered by the president. Nevertheless, he or she is constrained by other institutional settings regulating the referendum: a negative outcome causes a removal of the president from office.

people. Nevertheless, they failed to fulfil the minimum turnout or approval quorum and were thus not passed into law. Similar cases happened in referendums from above.

Regarding policy areas, it is not surprising that most referendums that have been held in the Baltics dealt with issues on state organisation (e.g. national identity, legal and political systems and citizens' rights) as the *Figure 5* illustrates. Especially in the transition period referendums were helpful tools to overcome the Soviet trauma and re-establish a country's crucial legal framework. However, as in Estonia and Latvia the re-establishment happened at the expense of Russian minorities. A second topic for referendums concerned questions on economics. Other policy areas were seldom or never subject to Baltic referendums.

## **6.2 Policy change through referendums**

34 referendums within twenty years is a relatively moderate quantity for these three new democracies. However, more important than the number of popular votes is the way in which they come about and the formal effect they finally cause.

As shown Baltic States are rich in direct democratic instruments that are being called automatically, by public authorities or even by citizens. Evidently the majority of the popular votes held in the Baltics belong to the top-down mechanism of direct democracy, which is in fact the least citizen-friendly direct democratic mechanism of all. Public authorities decide both the issue and time of a referendum, and citizens cannot take public decisions directly. The second major group of popular votes held is that of referendums from below. But, as already stated, they have been derived from political parties rather than from citizens.

Among 34 referendums held in the Baltics 30 (88%) intended to change the status quo (see *Table 4*). Independently of their proponents this is indeed a large number of referendums that have been used rather for a policy change than a status quo. In four cases the citizens did not follow the proponents and voted for the legislative status quo. On the contrary, in 26 cases (86%) the voters agreed with the policy change submitted to vote and voted in favour thereof. Whilst ten of them (33%) succeeded in full by becoming legally binding, more than a half (16) failed to pass into law and did not cause any formal effect due to procedural requirements.

Considering these results, we can argue that direct democracy in the Baltics did not show the desired effects of empowering the citizens and spreading the power more widely. In the beginning of this paper it was stated that direct democratic mechanisms with binding results theoretically introduce the people as one additional veto player into public legislations and any additional actor would diminish the potential for a policy change. At first sight the results confirm this assumption. A closer look at *Figure 4*, however, illustrates that most policy changes were made through provisions allowing required referendums, indeed, within a direct democratic mechanism where many actors with veto player status prevail. This is contrary to the predictions of veto-player model. However, it should be noted that the number of cases here (4 required referendums) is

relatively small to be significant. Also contrary to the assumption, these referendums that were under full control of the citizens remained completely ineffective. In fact, according to the theory of HUG/TSEBELIS, under such institutional provisions where the citizens control both the asking of the question of the popular vote and the triggering of the process of the referendum, it is expected that citizens individually determine the outcome of the referendum. Because, such referendums cancel out the other veto players, and, as the number of political actors decreases, the potential of policy change that is preferred by the citizens should increase<sup>414</sup>. Factually, as one can see, there was a strong popular effort towards a new policy. But, in 11 of 12 cases (all of them citizens' initiatives) citizens failed to form the veto player and thus policy outcomes favoured the status quo.

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414 HUG/TSEBELIS, p. 477-492.

**Table 4: Overview of Baltic referendums 1991–2012**

COUNTRY	NAME OF REFERENDUM	MECHANISM OF DD	NAME OF DD INSTITUTION	INTENTION OF REFERENDUM	POPULAR APPROVAL	IN FORCE
ESTONIA	Referendum on Estonia's independence	top-down	parliamentary plebiscite	for polity change	yes	yes
	Referendum on the constitution	top-down	parliamentary constitutional plebiscite	for policy change	yes	yes
	Referendum on voting rights for those who do not yet have citizenship status	top-down	parliamentary constitutional plebiscite	for policy change	no	no
	Referendum on the accession to the EU	required	mandatory constitutional referendum	for policy change	yes	yes
LATVIA	Referendum on Latvia's independence	top-down	parliamentary plebiscite	for polity change	yes	yes
	Referendum on the repeal of the facilitated naturalisation amendment	top-down	semi-plebiscite on repealing a law	for status quo	no	no
	Referendum on the repeal of the pension system reform amendment	top-down	semi-plebiscite on repealing a law	for status quo	yes	no
	Referendum on the accession to the EU	required	mandatory referendum on EU-Accession	for policy change	yes	yes
	Referendum on the repeal of amendments to the law on state security services	top-down	semi-plebiscite on repealing a law	for status quo	yes	no
	Referendum on the repeal of amendments to the law on state security authorities	top-down	semi-plebiscite on repealing a law	for status quo	yes	no
	Referendum on the dissolution of parliament by popular vote	bottom-up	citizens' constitutional initiative	for policy change	yes	no
	Referendum on a limited increase of public pensions	bottom-up	citizens' legislative initiative	for policy change	yes	no
	Referendum on the early dissolution of the Saeima (Parliament)	top-down	presidential plebiscite on recalling parliament	for polity change	yes	yes
	Referendum on Russian as the second official language	bottom-up	citizens' constitutional initiative	for policy change	no	no
LITHUANIA	Referendum on Lithuania's independence	top-down	parliamentary plebiscite on other issues	for polity change	yes	yes
	Referendum on the restoration of the presidential institution	top-down	parliamentary constitutional plebiscite	for policy change	yes	no
	Referendum on the withdrawal of Soviet troops	top-down	parliamentary plebiscite on other issues	for policy change	yes	yes
	Referendum on the constitution	required	mandatory constitutional referendum	for policy change	yes	yes
	Referendum on the law revoking privatisation I–VIII (8 parts)	bottom-up	citizens' legislative initiative	for policy change	yes	no
	Referendum on the compensation for lost assets prior to 1990	bottom-up	citizens' legislative initiative	for policy change	yes	no
	Referendum on parliamentary elections on the second Sunday of April every four years	top-down	parliamentary constitutional plebiscite	for policy change	yes	no
	Referendum on the reduction of parliamentary seats from 141 to 111	top-down	parliamentary constitutional plebiscite	for policy change	yes	no
	Referendum on social spending	top-down	parliamentary constitutional plebiscite	for policy change	yes	no
	Referendum on the purchase of agricultural land by certain legal bodies	top-down	parliamentary constitutional plebiscite	for policy change	no	no
	Referendum on the accession to the EU	required	mandatory referendum on particip. in Int. Org.	for policy change	yes	yes
	Consultative referendum on the service extension for the nuclear power plant 'Ignalina'	top-down	parliamentary plebiscite on other issues	for policy change	yes	no
	Consultative referendum on building of a new nuclear power plant 'Visaginas'	top-down	parliamentary plebiscite on other issues	for policy-change	no	no

### 6.3 Quality of direct democracy

The reasons for a low performance have been evaluated for each republic. Generally spoken, there are many procedural hurdles diminishing the will of the people and affecting the nature of the popular veto player, so that in most cases citizens fail to form the veto player. What thereafter follows is disappointment and distrust in direct legislation. In order to avoid such developments and to establish a citizen-friendly direct democracy, a number of formal factors have to be taken into account when a direct democratic mechanism has to be drawn up. The IRI names some important criteria such as signature thresholds, collection period, collection places, turnout and approval quorums, restriction of subject matter, kind of authorities' involvement and legal consequences of initiatives, where attention should be paid to get a reasonable well-designed direct democracy that encourages rather than prevents the people's participation<sup>415</sup>. But, it has to be taken into account that improving the quality of direct democracy by designing citizen-friendly procedures is not the only solution for a better performing direct democracy. A well-functioning direct democracy is also dependent on a well-motivated and self-confident *demos*. The role of the civic society and of civic education cannot be neglected. Further aspects such as finances and transparency in ballot campaigns are also essential to achieve a fair procedure of direct democracy and to realise its full potential. In the following table (Table 5) there is a selection of the most fundamental institutional and procedural criteria of direct democracy listed.

Without making the claim to be exhaustive, according to these elements a tentative judgment of the quality of direct democracy in the Baltic States has been undertaken<sup>416</sup>. The quality-check list is not definite; nevertheless, it is a useful tool with which to make a comparison between the three models of direct democracy in the Baltics. To explain the deficiencies of the direct democratic system better, also a summary reference to the institutions and procedures of direct democracy in Switzerland has been made.

As is well known, the Federal State of Switzerland has the longest, most detailed and most comprehensive experience of citizens' lawmaking in the world. This also becomes obvious when we consider the referendums that have been held between 1991 and 2012. Within the same time period as in the Baltic States, Swiss citizens were asked to decide on a total of 201 different referendums, around one half (98) of which succeeded in full and became legally binding<sup>417</sup>.

The *table on quality of direct democracy* consists of two parts that is divided into 'institutional' and 'procedural provisions'. For each part there are certain fundamental 'factors' that are required so that a direct democratic system can work. Derived from IRI's recommendations<sup>418</sup> and theoretical and even practical

415 IRI, p. 92-94.




416 The criteria to judge the quality of Baltic direct-democratic design are mostly derived from IRI's conceptualisation that is recommended to assess a better performing direct democracy, see IRI, Monitor, p. 26-29.

417 c2d database, [http://c2d.ch/votes.php?level=1&country=1&year=timeperiods&fromyear=1991&toyear=2012&speyear\[\]=2013&result=0&terms=&table=votes&sub=Submit\\_Query](http://c2d.ch/votes.php?level=1&country=1&year=timeperiods&fromyear=1991&toyear=2012&speyear[]=2013&result=0&terms=&table=votes&sub=Submit_Query) (accessed on 03.12.2012).

418 IRI, Monitor, p. 26-29.

explanations under *Chapters II-V*, for each factor there is a maximum number of ticks distributed. The more ticks a factor has the more essential it is for direct democracy. And the more ticks a country gets, the better designed and citizens-friendly is its direct democracy.

**Table 5: Quality of direct democracy in the Baltic States in comparison with Switzerland**

			FACTORS / CRITERIA	IRI'S RECOMMENDATION / MAX. ✓	ESTONIA	LATVIA	LITHUANIA	CH
MECHANISM OF DIRECT DEMOCRACY	Institutional Provisions	 REQUIRED	Mandatory constitutional referendum / Obligatory referendum on other issues	yes, but there should be no exclusions on issues, ✓✓	✓	✓	✓	✓✓
		 TOP-DOWN	from parliamentary minority	no recommendation, ✓	✗	(✓)	✓	✗
			from parliamentary majority or president	no recommendation, IRI rather critical (✓)	(✓)	(✓)	(✓)	✗
		 BOTTOM-UP	Citizens' facultative referendum	yes, should be available, ✓✓	✗	(✓)	✓	✓✓
			Citizens' constitutional and legislative initiative	yes, should be available, ✓✓✓	✗	✓✓✓	✓✓✓	✓✓(✓)
		Other Instruments	Citizens' recall	no recommendation, ✓	✗	✓	✗	(✗)
PROCEDURES OF DIRECT DEMOCRACY	Procedural Provisions	Procedure of signature collection	Number of signatures	in order to force a referendum the entry hurdles should not exceed 5 % of the electorate, ✓	✗	✗	✗	✓
			Collection time	a minimum of 6 months should be allowed, ✓	✗	✗	✗	✓
			Collection place	should be free at every public place, ✓	✗	✗	✓	✓
		Validation of the vote	Turnout quorum	participation quorum higher than 25% should be avoided, much better no participation quorum at all ✓	✓	✗	✗	✓
			Approval quorum	approval requirements as a proportion of the whole electorate should be avoided, ✓	✓	✗	✗	✓
			Character	binding results, ✓	✓	✓	✓	✓
		Initiative procedure	Direct or Indirect	indirect: parliament should be obliged to debate all popular initiatives and have the right to present a counter-proposal, ✓	✗	(✓)	(✓)	✓
			Restriction on subject matter	there should be no exclusion on issues in direct democratic process, ✓	✗	✗	✓	✓
			Central Electoral / Referendum Commission	a referendum electoral body should be available to advise the initiative committees, make a preliminary examination of the proposal, verify signatures, supervise the campaign, monitor and evaluate a referendum, ✓	✓	✓	✓	(✓)
		Number of ticks / «points»				Max. = 18.5	5.5	9

**Remarks**

- ✓ fulfilled (1), if a factor is of great significance to direct democracy then it is valued with more ticks  
 (✓) partially fulfilled or constrained by other provisions and consequently less citizen-friendly element (0.5)  
 ✗ not fulfilled, not available (0)  
 (✗) not fulfilled, but to some part available (0.25)

**Max** = the more ticks (points) a country gets, the more citizen-friendly and well designed is its direct democracy



### **6.3.1 Estonia**

As one can note, none of the Baltics States fulfil the institutional and procedural regulations in full. Estonia has the lowest grade (5.5 points) of 'direct democratic quality'. Considering the availability of institutional provisions, it can be stated that Estonia is weak in direct democratic instruments. The most serious shortcoming of the mechanisms is that there are no citizen-initiated referendums. Indeed, as already described in detail, there is a mandatory constitutional referendum but it can be applied only for few issues (to alter the provisions of Chapters I and XV of the Estonian constitution) and the parliamentary plebiscite remains an exclusive right of a majority in parliament. A specialty here is that any negative outcome of a parliamentary plebiscite for draft acts causes the dissolution of the parliament itself. Thus, this additional restriction makes the right of parliament to submit referendums on draft acts superfluous.

Regarding procedural provisions, Estonia still lags behind the IRI's recommendations. Some of the procedural deficiencies result from the missing bottom-up mechanism itself. The most positive procedural factor that is to be appreciated is the majority requirement for participation and approval of the vote. There is no turnout quorum that would put the validity of the referendum vote into question. The referendum becomes legally binding if the majority of the voters approves it. These theoretical aspects are also compatible with Estonian practice. Within twenty years, only four referendums have been held. However, the performance of these was very high, as three referendums became legally binding and no referendum had to be invalidated.

### **6.3.2 Latvia**

Moving to Latvia (9 points), one can see that almost all direct democratic institutions including the right of popular initiative for constitutional and legislative initiatives are available to the Latvian citizens. But, there is a weakness in the restrictions on subject matter here. Issues regarding the budget and laws concerning loans, taxes, custom duties, railroad tariffs or military conscription are excluded from the process of direct legislation. In addition to the citizens' initiatives, Latvians also have the citizens' right to veto a parliamentary resolution. But, it has to be valued as low since it needs a joint action with the president or one-third of the members of parliament. Without a first action by the authorities, the popular veto to repeal a law cannot be triggered. This is also the reason why this tool has been classified rather as a top-down instrument. A special and unique institutional feature that is recently given to Latvians is their right to recall parliament and set new elections to it. But, it must be noted that such a right allows for making decisions about a public body, rather than public issues.

Despite the availability of several direct democratic tools, Latvia scores very poorly in procedural provisions. For all types of referendums there are restrictive rules, excluding certain issues from direct legislation. Also a high number of signatures (10% of the total electorate) within a very short time period (1 month) are required in order to force a citizen-initiated referendum. And the options for signature gathering are limited since the collection cannot be done at every public place. At least, the initiative procedure is indirect, wherein the Latvian

parliament is obliged to debate all popular initiatives. It is free to adopt a citizens' proposal directly without submitting it to a referendum. At this stage a link is made between representative democracy and direct democracy, wherein citizens and representatives come closer. However, there are no provisions for counter-proposals or withdrawals, which is why only half of the possible ticks is given to Latvia. In the matter of turnout and approval quorums Latvia does not perform very well either. To validate a popular vote for almost each kind of referendum, a different majority requirement is asked. For a mandatory constitutional referendum and a citizens' constitutional referendum, indeed, no formal turnout requirement is asked. But, factually, a high turnout quorum nevertheless occurs, since for an approval of such a referendum more than a half of all eligible voters are needed. Other approval quorums are mostly coupled with the number of electors who participated in the previous parliamentary elections. The unique positive aspect on procedural criteria is that the outcome of a referendum is binding. Nevertheless, this provision alone did or does not actually enable the people to become a veto player within the decision-making process, nor does it particularly facilitate their use of these direct democratic tools in practice. As stated before, 10 referendums of almost all possible types have been held in practice. But, only three votes succeeded in full and five others failed to become legally binding, despite their adoption by the people.

### **6.3.3 Lithuania**

Lithuania, the western neighbour of Latvia, performs a bit better in terms of the quality of direct democracy (11 points). Citizens of the third Baltic republic can participate in referendums that are triggered automatically, whether by a minority of the parliament or by the citizens themselves. Required referendums can only be applied for those issues that are explicitly determined by the constitution (therefore only one tick). In contrast, there are no restrictions on subject matter for parliamentary plebiscites and citizens' initiatives.

Despite the wide range of direct democratic institutions, Lithuania does not perform very well on procedural conditions. Regarding the procedure of signature collection, neither the criteria of signature numbers nor time limits to gather the required signatures are met. Signatures of nearly 12 percent of the electorate have to be collected within three months. At this stage the proponents of a citizens' initiative are at least free to collect signatures in support of their proposal everywhere. Nevertheless, it is not surprising that all citizens' initiatives that were held in Lithuania were rather products of established political parties than of groups of citizens. A major deficiency that is inherent in Lithuanian direct democracy stems from the validation of the votes. To get valid results at first a minimum of 50 percent of the whole electorate has to participate. This rule applies to all referendum types. In addition to turnout quorums, there are also high approval requirements demanded by law. These two criteria have produced bad practice, since 14 of 20 referendums that were adopted by the people had to be invalidated. As mentioned before, turnout and approval quorums not only cause invalidations but also false incentives, so that some parties and their supporters do not contribute in political dialogues that would be vital for the success of a direct democratic process. Another negative criteria that the Lithuanian practice has revealed is the combination of referendum days with

parliamentary elections. Referendums were mostly used for particular interests before general elections. To avoid a mix-up of party politics and issue politics, new democracies should avoid such voting days. One positive aspect, besides the absence of restrictions on subject matter and binding referendum results, is the indirect procedure of initiatives and the central role of the parliament in it. The parliament is obliged to deliberate the citizens' final act, but also in Lithuania there are no legal provisions to present a counter proposal, nor does the initiative procedure include a withdrawal clause. As in the two other republics, in Lithuania referendums are also supervised by a central elections commission. An independent committee can fulfil an informative and supportive function for the citizens and keep direct democratic procedures from being dominated by the parliament or government.

#### **6.4 More than instruments**

No matter how many direct democratic instruments are available to the citizens, a direct democratic mechanism cannot work within a poorly designed framework, nor can it encourage the people to participate in direct legislation. To illustrate the importance of direct democracy's design, we make a short excursion to Switzerland. Swiss direct democracy contains instruments for referendums that are derived automatically or from citizens (without citizens' legislative initiative). At national level the absence of referendums that are triggered by authorities is not seen as a deficiency. The quality of Swiss direct democracy and its performance (201 referendums within the last two decades) are determined rather by its procedural than institutional provisions (15.25 points).

As illustrated in the table, in the procedural section Switzerland performs the best; all criteria that are listed are fulfilled. There is enough time (18 months for citizens' initiatives and 100 days for citizens' facultative referendums) to collect 100,000 signatures (2 % of the whole electorate) in support of citizens' initiatives and 50,000 signatures (1 % of the whole electorate) to veto parliamentary decrees. And signatures can be collected everywhere. No special majority requirements are applied to referendum decisions. A referendum becomes legally binding if the majority of the participants approves it. For constitutional amendments, however, a qualified approval quorum – double majority of people and cantons – is required since Switzerland is a federal state. Here, in order to be adopted, besides the majority of participants, also the majority of cantons must have voted in favour. And decisions that have been approved by the people can be altered by the parliament later. This is not necessarily a disadvantage. On the one hand, any constitutional amendment that is launched by the parliament has to be submitted to popular vote and, on the other hand, in other cases the amendment might be favourable to promoting a functional legal setting, instead of a legal deadlock.

In Switzerland there is no exclusion of any policy areas from being subject to a popular vote. Another citizen-friendly procedure results from the manner in which initiatives are treated before they are placed on the ballot. Swiss initiative procedure is an indirect process where popular initiatives must be considered by the government and parliament. The parliament is entitled to accept the initiative or to present a counter proposal as an alternative to the proposal contained in a citizens' initiative. The proponents of an initiative can also withdraw their

proposal if they agree with the alternative proposed by the parliament. If not, the counter proposal and citizens' initiative are placed on the ballot simultaneously, and citizens have a choice between these two alternatives. The advantage of an indirect initiative procedure, wherein representative and direct democracy are linked, lies in the fact that initiatives are debated longer and citizens and their representatives come closer to each other. In many cases the parliament recognises the need for legal action and enacts counter-proposals that can also increase the efficiency of citizens' initiatives. As GABRIELA ROHNER proves, almost half of citizens' constitutional initiatives have caused a change in the legislative status, resulting either from the direct adoption of citizens' initiatives, or the adoption of counter-proposals<sup>419</sup>. Nevertheless, in spite of these citizen-friendly provisions a major imperfection subsists as regards the procedures on the validity check of Swiss initiatives.

Considering these aspects, it can be stated that direct democracy is more than its instruments. In order to assess a qualitative and citizen-friendly direct democracy, several procedural provisions have to be taken into account. Not to be underestimate are the time allowances that are given for each stage of the direct democratic process. Solutions adopted through direct democratic procedures should not be hastily made decisions. The collection of signatures, responses from authorities, campaign and public debate need an appropriate period of time to develop interactivity and enact functional laws. And it does not matter how many people have turned out in the last stage of direct democratic legislation to achieve a final decision that is considered as legitimate. As long as the procedural design is legitimate (citizen-friendly provisions, accessibility) it will also generate legitimate outcomes, whether the popular decision is wrong or right.

## **7 Conclusions**

### **7.1 Rich in instruments, moderate in use, poor in performance**

Independently of the grade of direct democracy, in all three Baltic States referendums were helpful tools to overcome political deadlocks and to legitimise nation-building decisions in the beginning of 90s. All three countries showed how democracy could be restored peacefully and in accordance with international law through various forms of direct democracy. After the Soviet trauma, the people not only elected their representatives but also decided on fundamental policy issues with regard to independence, constitution, re-establishment of statehood and accession to a supranational organisation, such as the EU. One may note that Estonia, Latvia and Lithuania are as yet the only EU-member states that were formerly republics of the Soviet Union.

Currently, Baltic States have a large set of direct democratic instruments that were set up in difficult circumstances. Thanks to direct democratic tools with binding results, the citizens are partly introduced into the legislative process as one additional veto player, whose agreement is needed for a change in the legislative status quo. Following the conceptualisation of direct democratic mechanisms, many different types of referendums have been determined that are constitutionally provided for in these three republics. Required referendums

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419 ROHNER, p. 282.

exist in all three Republics. However, in all three countries the subject matter that is applied for such mandatory referendums is very restricted. Several constitutional issues do not make up a part of required referendums. Besides automatic referendums, in each country also referendums that are derived from the authorities exist. But, they are considered as less democratic since they are fully subject to the control of the authorities. Here, the citizens are only asked to go to polls and cast their votes for a proposal that has been framed and triggered by the public authorities. Top-down referendums can have somewhat more of a democratising effect, even if, as is the case in Lithuania, a parliamentary minority triggers the referendum. Without doubt, the largest effect that the people can have is through referendums that are from below. In contrast to the Estonians, the Latvians and Lithuanians are entitled to initiate referendums in order to amend the constitution or the law. Since recently, Latvians are also able to trigger a referendum on recalling the parliament.

Despite the fact of many direct democratic tools, the Baltic States perform only moderately well in terms of their application. Within the last two decades, 34 referendums have been held in these three republics: 20 in Lithuania, 10 in Latvia and 4 in Estonia. Among 34 referendums 30 intended to cause a policy change in the legislative status quo. Referendums from above are the leading group, followed by citizens' initiatives and automatic referendums. In all three direct mechanisms, political parties were the most active users. But, referendums have seldom been applied to reach solutions for deadlocked policies. On the contrary, in order to promote partisan interests and campaigns, parties often set them on the same day as parliamentary elections. Despite the active partisan use, however, it should be noted that direct democratic instruments have not been exploited to enlarge political power in favour of governing majorities or the president.

In terms of performance, the results show that the Baltic States do not rank well. Only one-third of the referendums passed into law and more than the half that were approved by the citizens were deemed to be invalid since they failed to achieve turnout or approval requirements. It should also be noted that none of citizen-initiated referendums became legally binding. Here, the model of veto player did not work at all. Despite the fact that citizens were in full control of the referendums (framing/triggering) they failed to reach political decisions on issues in which they were in disagreement with the political elite. And citizens were not able to determine the outcome of public decisions individually. These findings clearly challenge the general assumptions of the veto-player approach.

## **7.2 A better design for a better balance**

The weak performance of direct democratic mechanisms in the Baltics can be explained by two main factors: First, the informal settings, such as the political culture and behaviour of the elites within the given contextual settings. All three republics are new democracies that had a difficult path ahead of them. The Soviet regime, lasting over 40 years, was enough to suppress any development of individual and self-confident people. Consequently, an adequate time is needed to develop a strong civil society that places its trust in direct legislation. Thus, each referendum that is held in these countries may contribute to promote collective learning and trust in direct democratic procedures. Another informal

reason for the poor performance of referendums originates from the elites. They still interact within a legal framework that favours their interests, and in some cases referendums have been part of their strategic calculations. In addition to the informal aspects, the weak performance is also a result of a less citizen-friendly procedural design of direct democracy. It is true that the implementation of direct democratic provisions was made within volatile economic, social, and technical circumstances. But, it is also true that until now less effort has been made by the elites to make participatory democracy more citizen-friendly. In each republic there are the same formal constraints, such as restrictions on subject matter, high signature numbers, short collection periods, high turnout and approval quorums, that diminish the sovereignty of the people.

The introduction of direct democratic tools into constitutional law in order to give citizens the means to play an active role in politics is indeed a big step. But, regarding the settings and results outlined in this paper we can conclude that Baltic States have not risen to the challenge of striking a balance between representative and direct democracy yet. To reach this goal, it is not only important which direct democratic mechanism is available in one country but also how these mechanisms are framed. Many obstacles and high hurdles are less helpful to develop a strong civil society and to encourage the people to participate in direct legislation more actively. Such constraints rather impede deliberative dialogs and cause distrust in direct democratic polities.



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